

Decision and Order

IN THE MATTER OF

ROBERT BOSCH GMBHCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND 5(A) OF THE FEDERAL TRADE
COMMISSION ACT*Docket No. C-4377; File No. 121 0081**Complaint, November 21, 2012 – Decision, April 23, 2013*

This consent order addresses the acquisition by Robert Bosch GmbH (“Bosch”) of the SPX Service Solutions business of SPX. Bosch is a global supplier of automotive and industrial, consumer goods, and building technology. On January 23, 2012, Bosch entered into an agreement to acquire the SPX Service Solutions business from SPX, the leading supplier of air conditioning recycling, recovery, and recharge (ACRRR) devices. ACRRR devices are stand-alone pieces of equipment used by automotive technicians to remove refrigerant from a vehicle’s on-board air conditioning system, store the refrigerant while the air conditioning system is being serviced, and recycle the refrigerant back into the system. The complaint alleges that Bosch’s proposed acquisition of SPX Service Solutions would create a virtual monopoly in the ACRRR market. The order requires Bosch to divest its ACRRR business to a viable competitor, Mahle Clevite, Inc. Bosch is also required to grant manufacturers’ licenses to key patents that Mahle needs in order to compete in the ACRRR market. Lastly, the order also requires Bosch to end agreements that restrict third parties from advertising, servicing, distributing, or selling competitive products in the United States.

Participants

For the *Commission*: *Jordan S. Andrew, Jacqueline Mendel, Eric Rohlck and Mark Silvia.*

For the *Respondent*: *Michael A. Kindsay and Jaime Stilson, Dorsey & Whitney LLP; and Maria Cirincione, Damon Kalt, and Barry Nigro, Fried Frank Harris Shriver & Jacobson.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Robert Bosch GmbH, a corporation subject to the jurisdiction of the Commission has: (1) agreed to acquire the SPX Service

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Solutions business (“SPX Service Solutions”) from SPX Corporation, a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and (2) has engaged in conduct that violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Robert Bosch GmbH (“Bosch”) is a corporation organized, existing, and doing business under and by virtue of the laws of Germany, with its principal U.S. subsidiary, Robert Bosch LLC, a limited liability company organized, existing and doing business under the laws of the State of Delaware with its headquarters at 38000 Hills Tech Drive, Farmington, MI 48331. Bosch is a leading global supplier of automotive and industrial technology, consumer goods and building technology. Bosch employs approximately 300,000 people and had sales of over \$71 billion in fiscal year 2011. In North America, Bosch has approximately 22,500 employees and had revenues of approximately \$9.8 billion in 2011. Bosch, through its subsidiary RTI Technologies, Inc., develops, manufactures and markets air conditioning recovery, recycling and recharging systems (“ACRRR”) for motor vehicles, sold under the brand names Bosch and RTI in the United States. After the Acquisition, Bosch shall include SPX Service Solutions, and its Robinair-brand ACRRRs.

2. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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II. THE ACQUIRED COMPANY

3. SPX Service Solutions is a division of SPX Corporation, with its headquarters address located at 28635 Mound Road, Warren, MI 48092. SPX Service Solutions is comprised of various legal entities and assets (including the patents referenced in Paragraph 15 herein) that constitute a global business of SPX Corporation. The global SPX Service Solutions business includes: (i) providing vehicle repair and maintenance solutions, including diagnostic products, services and dealer equipment, technical information, tools and equipment, daily sale and air conditioning (including Robinair-brand ACRRRs) and fluids to automotive original equipment manufacturers, OEM dealers and the aftermarket; and, (ii) tungsten carbide machining, ceramic machining and machining other hard exotic material to specification. SPX Service Solutions had 2011 sales of approximately \$927 million.

4. The ultimate parent entity of SPX Service Solutions is SPX Corporation. SPX Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters located at 13515 Ballantyne Corporate Place, Charlotte, NC 28277. SPX Corporation is a diversified global supplier of highly engineered products for the following industries: power and energy, food and beverage, vehicle and transit, infrastructure and industrial processes with 2011 revenues of over \$5 billion. The company employs over 18,000 people.

III. THE PROPOSED ACQUISITION

5. On January 23, 2012, Respondent entered into a Purchase and Sale Agreement (“the Acquisition Agreement”) with SPX Corporation whereby Respondent proposes to acquire substantially all assets and legal entities that comprise the SPX Service Solutions business. The transaction is valued at \$1.15 billion (“the Acquisition”).

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IV. THE RELEVANT MARKET

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of ACRRRs used for the repair of motor vehicle air conditioning systems (“MVACs”). ACRRRs, including add-ons and accessories, are used to repair malfunctioning MVACs by recovering and recycling the refrigerant, and then recharging the MVACs.

7. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

V. STRUCTURE OF THE MARKET

8. The market for ACRRRs in the United States is highly concentrated. Bosch and SPX Service Solutions are currently the two most significant participants in the ACRRR market in the United States, as measured by the Herfindahl-Hirschman Index (“HHI”). Post-Acquisition, Bosch would control over 90% of the relevant market, combining Bosch’s approximate 10% market share with SPX Service Solutions’s market share of over 80%. Four other firms comprise the balance of sales in the United States.

VI. ENTRY CONDITIONS

9. Entry into the relevant market is not likely to occur in a timely manner sufficient to deter or counteract the anticompetitive effects of the Acquisition. The most significant barriers to entry into the relevant market are (1) building a sufficient national network of after-sale service centers to provide rapid-turnaround repair services for equipment when repairs are required, and (2) obtaining sufficient access and visibility in the relevant distribution channels. In addition, ACRRRs must be in compliance with standards established by SAE International, an industry standard-setting organization. Such compliance may involve potentially costly licensing of standard-essential patents. SAE also requires ACRRR market participants to manufacture multiple ACRRR prototypes for testing by independent testing facilities, a requirement that adds manufacturing costs. For these

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reasons, an entrant is unlikely to achieve a significant market impact within two years to counteract or deter any anticompetitive effects of the Acquisition.

VII. EFFECTS OF THE ACQUISITION

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by eliminating actual, direct, and substantial competition between Bosch and SPX Service Solutions in the ACRRR market, thereby (1) increasing the likelihood that Bosch will be able to exercise unilateral market power in this market, and (2) increasing the likelihood that customers would be forced to pay higher prices.

VIII. CONDUCT

11. The United States Environmental Protection Agency (“EPA”) regulates the refrigerants used in MVACs. Section 608 of the Clean Air Act Amendments of 1990 directs EPA to establish requirements to prevent the release of ozone-depleting substances during the servicing, repair, or disposal of appliances and industrial process refrigeration. The repair of MVACs is regulated under section 609 of the Clean Air Act.

12. Industry standards for ensuring compliance with EPA regulations during the repair of MVACs are established by SAE. Standards for ACRRRs at SAE are established by SAE’s Interior Climate Control Standards Committee (“ICCSC”).

13. Two SAE standards established for the regulation of ACRRR equipment are J-2788 and J-2843. J-2788 relates to a type of air conditioner refrigerant called HFC-134a. This standard establishes the specific minimum equipment performance requirements for recovery and recycling of HFC-134a that has been directly removed from, and is intended for reuse in, MVACs. It also is intended to establish requirements that the equipment used to recharge MVACs utilizing HFC-134a meet certain specified accuracy levels established by SAE J-2099

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(another SAE standard). J-2843 relates to another air conditioner refrigerant called R-1234yf. Like J-2788, J-2843 establishes requirements that the equipment used to recharge MVACs with R-1234yf refrigerant meet certain specified accuracy levels established by SAE J-2099.

14. A representative(s) of SPX Service Solutions was a working group member of SAE's ICCSC during the drafting of SAE J-2788 and SAE J-2843.

15. Section 1.14 of SAE's Technical Standards Governance Board Policy Manual ("the SAE Policy Manual") requires that a working group member that owns, controls or licenses potentially standard essential patents make such patents available for licensing either (1) without compensation or (2) under reasonable terms and conditions that are demonstrably free of any unfair discrimination. These licensing commitments enable SAE to include relevant patents in its standards, and have confidence in the subsequent widespread adoption of the standard.

16. After the adoption of SAE J-2788, SPX Corporation sued certain competitors, including Bosch, for infringing patents that may be essential to the practice of SAE J-2788. After the adoption of J-2843, SPX amended its complaint to include a patent essential to the practice of J-2843. SPX Corporation sought injunctive relief in this lawsuit.

17. Following the commencement of the suit described in paragraph 16, SAE sought assurance from SPX Service Solutions that it did not hold or currently intend to hold any invention claimed in a patent the use of which would be required for compliance with SAE J-2788 and J-2843 standards; or in the alternative, written assurance that SPX Service Solutions would license its standard-essential patents royalty-free or under reasonable terms and conditions that were demonstrably free of any unfair discrimination.

18. After receiving the letter from SAE referenced in Paragraph 17, SPX Service Solutions provided a letter of assurance to SAE stating that it believed it owned or controlled patents or pending patent applications that it believed could potentially be infringed by compliance with SAE J-2788 and SAE

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J-2843, and that, to the extent that a claim is essential to practicing either the SAE J-2788 or J-2843 standards, SPX Service Solutions would license these patents to applicants, on a claim-by-claim basis, as required for compliance with the SAE J-2788 and J-2843 standards, under reasonable terms and conditions that are demonstrably free of any unfair discrimination. SPX Service Solutions has not provided SAE with a list of all patents and patent applications that may be essential to the implementation of SAE J-2788 and SAE J-2843.

19. Despite its letter of assurance to SAE, however, SPX Service Solutions continued to prosecute the suit for injunctive relief described in Paragraph 16. The defendants in this suit were willing licensees of SPX Service Solutions' standard-essential patents.

20. SPX Service Solutions' breach of its commitment to offer licenses its standard-essential patents pursuant to its obligations under 1.14 of the SAE Policy Manual by seeking injunctive relief over the same standard-essential patents, would exclude its competitors from the market, have caused, or threaten to cause, harm to competition and will continue to do so unless the relief requested herein is granted. SPX Service Solutions' conduct, if left unchecked, tends to undermine the vitality of the standard-setting process.

IX. VIOLATIONS CHARGED

21. The Acquisition Agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

22. The Acquisition described in Paragraph 8, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

23. The allegations alleged in paragraph 11-20 are incorporated herein by reference. The conduct of SPX Service Solutions and SPX Corporation, constitutes an unfair method of competition in or affecting commerce in violation of Section 5 of

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the FTC Act, as amended, 15 U.S.C. § 45. This conduct, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of November, 2012, issues its Complaint against said Respondent.

By the Commission, Commissioner Rosch and Commissioner Ohlhausen dissenting.

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The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of SPX Service Solutions (“SPX SS”) a division of SPX Corporation (“SPX”) by Robert Bosch GmbH (“Respondent Bosch”), and Respondent Bosch having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Bosch that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent Bosch has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”).

1. Respondent Bosch is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its principal U.S. subsidiary, Robert Bosch LLC, a limited liability company organized, existing and doing business under the laws of the State of Delaware with its headquarters located at 38000 Hills Tech Drive, Farmington MI 48331.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Bosch” means Robert Bosch GmbH, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Robert Bosch GmbH (including Robert Bosch LLC, RTI Technologies, Inc. (“RTI”), Beissbarth GmbH, and SPX SS after the Acquisition), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

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- B. “SPX ” means SPX Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters located at 13515 Ballantyne Corporate Place, Charlotte, NC 28277
- C. “SPX SS” means SPX Service Solutions, a division of SPX, with its headquarters located at 28635 Mound Road, Warren, MI 48092.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquisition” means Respondent Bosch’s acquisition of SPX SS.
- F. “Acquisition Date” means the date on which the Acquisition is consummated.
- G. “Acquirer” means:
 - 1. an entity that is specifically identified in this Order to acquire particular assets that Respondent Bosch is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final; or
 - 2. an entity that receives the prior approval of the Commission to acquire particular assets that Respondent Bosch is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- H. “ACRRR” means air conditioning recovery, recycling and recharging.
- I. “ACRRR Product” means an ACRRR stand-alone piece of equipment, including add-ons and accessories, used to repair malfunctioning vehicular air

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conditioning systems by recovering and recycling the refrigerant, and recharging the air conditioning unit including, but not limited to, equipment related to the SAE J2788 (R-134a) and SAE J2843 (R-1234yf) standards.

- J. “Action” means any proceeding whether legal, equitable, or administrative, as well as any arbitration, mediation, or any other form of public or private dispute resolution in the United States or anywhere else in the world.
- K. “Bosch ACRRR Product” means any ACRRR Products made by or for Respondent Bosch, before the Acquisition, by any Person including, but not limited to, ACRRR Products manufactured by Respondent Bosch’s RTI subsidiary, the ACS 620, the ACS 620H, the ACS 625, the ArcticPRO RHS980, and AC Safe (Mercedes Benz). *Provided, however*, that unless otherwise required or described in this Order, “Bosch ACRRR Product” does not mean any ACRRR Product manufactured or sold by SPX SS. *Provided further, however*, that “Bosch ACRRR Product” does not mean the ACRRR Products made by Respondent Bosch’s subsidiary in India that are not currently sold in the United States or Canada.
- L. “Bosch ACRRR Business” means all of Respondent Bosch’s assets, tangible and intangible, businesses and goodwill, related to the research, Development, manufacture, distribution, marketing or sale of Bosch ACRRR Products worldwide including, without limitation, the following:
 - 1. all Bosch ACRRR Product Intellectual Property;
 - 2. all manufacturing technology;
 - 3. all Bosch ACRRR Product scientific and regulatory material;

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4. all Bosch ACRRR Product manufacturing equipment, to the extent owned by Respondent Bosch and located in the United States;
5. to the extent related to the Bosch ACRRR Product, all of Respondent Bosch's rights, titles and interests in, and to, the contracts entered into in the ordinary course of business with customers, suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees, in each case that are Third Parties, including, without limitation, all of Respondent Bosch's contracts with any Third Party to the extent related to the supply of components used in the manufacture of the Bosch ACRRR Product. *Provided, however,* that Bosch ACRRR Business shall not include Third Party supply contracts with Bosch Limited related to the human machine interface;
6. all inventory wherever located worldwide, including raw materials, packaging materials, work-in-process and finished goods, in each case to the extent consisting of, or intended for use in the manufacture of, the Bosch ACRRR Product including, but not limited to, factory-installed accessories, and other accessories or add-ons related to the Bosch ACRRR Product.
7. all commitments and orders for the purchase of goods that have not been shipped, to the extent such goods are, or are intended for use in the manufacture of, the Bosch ACRRR Product;
8. all rights under warranties and guarantees, express or implied, with respect to the Bosch ACRRR Product;
9. all items of prepaid expenses, to the extent related to the Bosch ACRRR Product; and

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10. all books, records and files related to the foregoing, or to the Bosch ACRRR Product including, but not limited to, all records, contact information, notes, and files of Respondent Bosch, including its Beissbarth GmbH affiliate, relating to Respondent Bosch's marketing, sales, and homologation of Bosch ACRRR Products to any Third Party (including original equipment manufacturers and aftermarket Persons) wherever located.

Provided, however, that unless otherwise required in this Order, "Bosch ACRRR Business" does not include: (1) any assets related to the ACRRR Products manufactured and sold by SPX SS; and (2) assets or groups of assets specifically excluded, and listed in the Remedial Agreement;

Provided further, however, that except as provided to the Acquirer for transition purposes, or as part of the Remedial Agreement, or otherwise provided for in this Order, "Bosch ACRRR Business" shall not include any of the following: (a) the name "Bosch," or the names of any other divisions, businesses, corporations or companies owned by Respondent Bosch; (b) any interest in real property; or (c) any personal property.

M. "Bosch ACRRR Product Intellectual Property" means all of the following related to the Bosch ACRRR Product:

1. all of Respondent Bosch's intellectual property used in the development, manufacturing, storage, distribution, service, and sale of Bosch ACRRR Product including, but not limited to:
 - a. Bosch ACRRR Manufacturing Copyrights;
 - b. Trademarks and Trade Dress including, but not limited to, all rights to the name RTI, and all Trademarks, Trade Dress, and logos related to RTI. *Provided further, however,* that except as

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provided to the Acquirer for transition purposes, or as part of the Remedial Agreement, or otherwise provided for in this Order, “Bosch ACRRR Product Intellectual Property” shall not include the name “Bosch,” or the names of any other divisions, businesses, corporations or companies owned by Respondent Bosch;

- c. Software;
- d. computer programs;
- e. Patents including, but not limited to, the RTI Patents, the Bosch/Agramkow Patents, the Bosch Limited Patents, and the right to obtain and file for Patents;
- f. Bosch ACRRR Product Sales Copyrights;
- g. licenses including, but not limited to, licenses to Third Party Software if transferable and sub-licenses to Software modified by Respondent Bosch;
- h. Know-How;
- i. technical information (including, but not limited to, material and final product specifications);
- j. protocols (including, but not limited to, operational manuals);
- k. quality control information and methods, and other confidential or proprietary technical, business, development and other information;
- l. trade secrets; and

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- m. all rights to limit the use or disclosure thereof of Trade Dress, and the modifications or improvements to such intellectual property; and
- 2. subject to any mutually agreed covenant not to sue between Respondent Bosch and Acquirer, rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing.

Provided, however, that “Bosch ACRRR Intellectual Property” does not include the Bosch/Agramkow Safety Patent or the the Bosch/Agramkow Patents Know-How.

- N. “Bosch ACRRR Product Manufacturing Copyrights” means copyrights in all process development data and reports relating to the research and development of the ACRRR Product manufactured and sold by Respondent Bosch, or of any materials used in the research, Development, manufacture, manufacturing records, manufacturing processes, and supplier lists of or for the Bosch ACRRR Product; all copyrights in data contained in laboratory notebooks relating to the Bosch ACRRR Product; all copyrights in analytical and quality control data relating to the Bosch ACRRR Product; and all correspondence with governmental agencies or qualifying or homologating organizations worldwide relating to the foregoing.
- O. “Bosch ACRRR Product Sales Copyrights” means rights to all original works of authorship of any kind directly related to the sale of the Bosch ACRRR Product, and any registrations and applications for registrations thereof, including, but not limited to, all such rights with respect to:
 - 1. all promotional, marketing, sales, and advertising materials, educational and training materials for the sales force, and sales forecasting models;

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2. marketing or sale of the Bosch ACRRR Product including copyrights in all raw data, statistical programs developed (or modified in a manner material to the use or function thereof (other than through user preferences)) to analyze research data, market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all such rights with respect to customer information; and
 3. records, including customer lists, sales force call activity reports, vendor lists, and sales data.
- P. “Bosch/Agramkow Patents” means the Patents currently owned in whole or in part by Respondent Bosch but were previously owned by Agramkow (the former owner of RTI).
- Q. “Bosch/Agramkow Patents Know-How” means Know-How licensed to Respondent Bosch from Agramkow related to the Bosch/Agramkow Patents, including the Know-How related to the Bosch/Agramkow Safety Patent.
- R. “Bosch/Agramkow Safety Patent” means the only Bosch/Agramkow Patent, numbered WO 2011/066833 A1, that is co-owned by Respondent Bosch and Agramkow (the former owner of RTI).
- S. “Bosch Limited Patents” means Patents owned by Respondent Bosch’s India subsidiary and used in the manufacture of ACRRR Products including, but not limited to, the human machine interface Patents.
- T. “Bosch Limited Patents Know-How” means the Know-How owned by Respondent Bosch’s India subsidiary related to the Bosch Limited Patents.
- U. “Bosch/Mahle Divestiture Agreement” means the asset purchase agreement, together with all licenses, assignments, and other agreements entered into by Respondent Bosch and Mahle for the sale of the Bosch

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ACRRR Business, and all other agreements, leases, transfers, and licenses required by this Order. The Bosch/Mahle Divestiture Agreement is attached as Confidential Appendix A to this Order.

- V. “Confidential Business Information” means competitively sensitive, proprietary, and all other information, solely relating to the Bosch ACRRR Business, that is not in the public domain, and includes, but is not limited to, information relating to the research, Development, manufacturing, marketing, or sale of the ACRRR Product, including the terms of the Remedial Agreement, all customer lists, price lists, contracts, cost information, technologies, processes, or other trade secrets related to the ACRRR Product and the Bosch ACRRR Business. *Provided, however*, that “Confidential Business Information” shall not include (1) information that subsequently falls within the public domain through no violation of this Order or of any confidentiality agreement with respect to such information by Respondent Bosch or (2) information that Respondent Bosch can demonstrate it lawfully obtained prior to the Acquisition Date.
- W. “Designated Employee” means a Person or Person filling the job description (if the Person listed is no longer employed at that particular job) listed on Confidential Appendix B to this Order.
- X. “Development” means all development activities, including formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting trials for the purpose of obtaining any and all approvals, licenses, homologation, registrations or authorizations from any agency, standard setting organization, or customer necessary for the manufacture, use, import, export, promotion, marketing and sale of a Bosch ACRRR Product, and

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regulatory affairs activities related to the foregoing.
“Develop” means to engage in Development.

- Y. “Divestiture Date” means the date on which Respondent Bosch or a divestiture trustee divests the Bosch ACRRR Business pursuant to Paragraph II or VIII.
- Z. “Mahle” means Mahle Clevite Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware, headquarters address located at 1240 Eisenhower Place, Ann Arbor, MI 48108.
- AA. “Know-How” means know-how (including, but not limited to, flow sheets, process and instrumentation), diagrams, risk analysis, certificates of analysis, goodwill, technology (including, but not limited to, equipment specifications), drawings, utility models, designs, design rights, techniques, data, inventions, practices, recipes, raw material specifications, process descriptions.
- BB. “Patents” means all patents, pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- CC. “Person” means any natural person, partnership, corporation, association, trust, joint venture, limited liability company, government, government agency, division, or department, or other business or legal entity.
- DD. “Remedial Agreement” means the following:

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1. the Bosch/Mahle Divestiture Agreement if such agreement has not been rejected by the Commission pursuant to Paragraph II of this Order; and
 2. any agreement between Respondent Bosch and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, Related to the relevant assets to be granted, licensed, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- EE. “RTI” means RTI Technologies, Inc., a wholly owned subsidiary of Respondent Bosch.
- FF. “RTI Patents” means the Patents owned by RTI.
- GG. “RTI Sandwich Manifold Patent” means the RTI Patent No. 7,726,343.
- HH. “Software” means executable computer code and the documentation for such computer code, but does not mean data processed by such computer code.
- II. “SPX ACRRR Patents” means Patents that are listed in Appendix D to this Order. “SPX ACRRR Patents” may be, but are not necessarily, “SPX Essential Patents.”
- JJ. “SPX Essential Patents” means any Patents owned by SPX or SPX SS before the Acquisition and Respondent Bosch after the Acquisition that are or may be essential to the practice of the SAE J2788 or SAE J2843 standards as described in the Letter of

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Assurance to SAE International, attached at Appendix E to this Order.

- KK. “SPX Patent Lawsuit” means the lawsuit in the Northern District of Ohio captioned: SPX Corp. v. Mastercool U.S.A., Inc., Norco Industries, and RTI Tech., No. 3:10-cv-1266, which includes, among other things, a demand for an injunction.
- LL. “SPX Patent Lawsuit Patents” means the Patents listed in Exhibit F to this Order.
- MM. “Third Party(ies)” means any Person other than Respondent Bosch or the Acquirer.
- NN. “Trade Dress” means the current trade dress of a particular product or Person including, without limitation, product packaging, logos, and the lettering of the product trade name, brand name, or corporate name.
- OO. “Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights therein, and the goodwill symbolized thereby and associated therewith.
- PP. “United States” means United States of America.
- QQ. “York, Pennsylvania Facility” means the facility and offices located at 10 Innovation Drive, York, Pennsylvania 17402, that is related to the Bosch ACRRR Business consisting of, among other things, office, manufacturing, production, and packaging space for the Bosch ACRRR Business.

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II. (Divestiture)**IT IS FURTHER ORDERED** that:

- A. No later than December 31, 2012, Respondent Bosch shall divest the Bosch ACRRR Business absolutely and in good faith, to Mahle, pursuant to, and in accordance with, the Bosch/Mahle Divestiture Agreement. The Bosch/Mahle Divestiture Agreement (which shall include, among other things, the asset purchase agreement, transition services agreements, the lease to or assignment of a lease to the York, Pennsylvania Facility, licenses between Respondent Bosch and Mahle including, but not limited to, a license to the Bosch Limited Patents Know-How, Bosch/Agramkow Patents Know-How which includes the Bosch/Agramkow Safety Patent Know-How, and assignment of the RTI Patents, the Bosch Limited Patents, and the Bosch/Agramkow Patents) shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Mahle, or to reduce any obligations of Respondent Bosch under such agreements, and such agreements, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof.

Provided, however, that nothing in this Paragraph II.A. prohibits Respondent Bosch from negotiating, as part of the Remedial Agreement, a non-exclusive, paid-up, royalty-free license to the Bosch Limited Patents or the RTI Sandwich Manifold Patent for use on ACRRR Products not manufactured or sold in The United States or Canada.

Provided further, however, that with respect to documents or other materials included in the Bosch ACRRR Business that contain information (a) that relates to both the Bosch ACRRR Business and to other products or businesses of Respondent Bosch, or

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(b) for which Respondent Bosch has a legal obligation to retain the original copies, Respondent Bosch shall be required to divest to the Acquirer only copies or, at its option, relevant excerpts of such documents and materials, but Respondent Bosch shall provide the Acquirer access to the originals of such documents as necessary, it being a purpose of this proviso to ensure that Respondent Bosch not be required to divest itself completely of records or information that relates to products or businesses other than the Bosch ACRRR Business;

Provided further, however, that with respect to any contract or agreement included in the Bosch ACRRR Business that relates both to the Bosch ACRRR Product and to any other product, Respondent Bosch may, concurrently with assigning such contract or agreement to the extent it relates to the Bosch ACRRR Product, retain its rights under such contract or agreement for purposes of such other product(s).

Provided further, however, if, at the time the Commission determines to make this Order final, the Commission notifies Respondent Bosch that Mahle is not an acceptable Acquirer then, after receipt of such written notification: (1) Respondent Bosch shall immediately notify Mahle of the notice received from the Commission and shall as soon as practicable effect the rescission of the Bosch/Mahle Divestiture Agreement; and (2) Respondent Bosch shall, within one-hundred-twenty (120) days from the date this Order becomes final, divest the Bosch ACRRR Business, enter into manufacturing and distribution agreements, assign or extend rights and obligations under customer contracts, and divest any other assets or enter into any other relief required to satisfy the purposes of this Order, absolutely and in good faith, at no minimum price, to or with an Acquirer, that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission;

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Provided further, however, that if Respondent Bosch has complied with the terms of Paragraphs II.A. before the date on which this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent Bosch that the manner in which the divestiture and assignments were accomplished is not acceptable, the Commission may direct Respondent Bosch, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture and assignments including, but not limited to, entering into additional agreements or arrangements, as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Respondent Bosch shall, as part of the Remedial Agreement:
 - 1. grant a royalty-free, fully-paid-up, irrevocable, perpetual exclusive license (even as to the Respondent Bosch) to the:
 - a. Bosch/Agramkow Safety Patent, with rights to sublicense (to the extent that Respondent Bosch has the legal authority to grant such rights);
 - b. Bosch/Agramkow Patent Know-How, with rights to sublicense (to the extent that Respondent Bosch has the legal authority to grant such rights);
 - 2. grant a royalty-free, fully-paid-up, irrevocable, perpetual non-exclusive license, to the SPX Patent Lawsuit Patents and the SPX ACRRR Patents (whether or not they are SPX Essential Patents) solely for the sale of ACRRR Products in the United States.
- C. Prior to the Divestiture Date, Respondent Bosch shall secure all consents, assignments, and waivers from all Third Parties that are required for the Acquirer to

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manufacture and sell the Bosch ACRRR Products as of the Divestiture Date including, but not limited to, securing a lease for the York, Pennsylvania Facility, if such facilities are being leased to the Acquirer, and securing consents from all customers of the Bosch ACRRR Business whose contracts are being assigned or extended to the Acquirer pursuant to Paragraph II.A.

Provided, however, Respondent Bosch may satisfy this requirement with respect to any one or more leases or agreements by certifying that the Acquirer has executed such relevant agreements directly with each of the relevant Third Parties.

- D. Any Remedial Agreement that has been approved by the Commission between Respondent Bosch (or a Divestiture Trustee) and a Commission-approved Acquirer shall be deemed incorporated into this Order, and any failure by Respondent Bosch to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- E. Respondent Bosch shall include, as part of a Remedial Agreement, any transition services agreement or agreements under which Respondent Bosch shall provide services or assistance to the Acquirer. Such transition services agreement or agreements shall include, but not be limited to:
 - 1. an agreement relating to the Acquirer's assuming accounts that were administered by Respondent Bosch in which it sells Bosch ACRRR Products and accessories under Respondent Bosch's (or its subsidiary's) name. Such agreement may include, among other things, procedures for introducing the Acquirer to contact persons from the various accounts, either in person or by written communication and a transfer of all relevant information relating to such accounts;

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2. an agreement relating to the Acquirer's assuming accounts, and continuing the marketing, sales, and homologation of Bosch ACRRR Products sold under Respondent Bosch's (or its subsidiary's) name worldwide. Such agreement may include, among other things, procedures for introducing the Acquirer to contact persons from the various accounts or manufacturers, either in person or by written communication, and a transfer of all relevant information relating to such accounts or manufacturers;
 3. an agreement for the temporary and transitional use of Respondent Bosch's Trade Dress, Trademarks, or other trade name on products sold by the Acquirer;
 4. scope of services, term, and prices or costs for such services; and
 5. the option for the Acquirer to terminate a particular service in the United States:
 - a. at any time, with prior notice not greater than thirty (30) days, without penalty or payment for the remainder of the original service period; and
 - b. without automatically terminating, or incurring a penalty or additional cost for continuing, that particular service in another part of the world.
- F. Respondent Bosch shall not terminate or modify any agreement that is part of a Remedial Agreement before the end of the term approved by the Commission without prior approval of the Commission pursuant to Commission rule 2.41(f)(5).
- G. The purposes of this Paragraph II of the Order are: (1) to ensure that the Acquirer will have the intention and ability to produce and sell the Bosch ACRRR Products

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independently of Respondent Bosch; and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III. (Terminate Agreements)**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days of the Acquisition Date:
1. Respondent Bosch shall terminate, and cease and desist from continuing or enforcing, any existing oral or written condition, requirement, policy, agreement, contract or understanding ("Restrictions") with any Person that, directly or indirectly prohibits or restricts a Person from advertising, servicing, distributing, or selling any ACRRR Product from any Third Party in the United States including, but not limited to, Restrictions contained in the following provisions and agreements: the "Robinair Domestic Service Center Agreement," the "SPX Service Solutions Authorized Warehouse Distributor Contract," and the "Robinair Advertising Loyalty Commitment Form."
 2. Respondent Bosch shall notify, in the form of the letter attached in Appendix G to this Order, by first class mail, return receipt requested, or by e-mail with a return acknowledgment required, the general counsel, president, or main contact person responsible for the sales and marketing of ACRRR Products for all Third Parties with such Agreements described in Paragraph III.A., above, including, but not limited to, the Third Parties listed in Confidential Appendix H to this Order, that Respondents:
 - a. are terminating, pursuant to this Order, such Restrictions, and

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- b. shall be prohibited from entering into such Restrictions or any similar Restrictions in the United States for ten (10) years from the date the Order becomes final.
- B. For ten (10) years from the date the Order becomes final, Respondent Bosch shall cease and desist from inviting, entering into, implementing, continuing, enforcing, or attempting or threatening thereto, any Restrictions with any Person that, directly or indirectly prohibits or restricts a Person from advertising, servicing, distributing, or selling any ACRRR Product from any Third Party in the United States.

IV. (Patents)**IT IS FURTHER ORDERED** that:

- A. Respondent Bosch shall not reinstate or refile the SPX Patent Lawsuit that was dismissed, which included, among other things, a demand for an injunction;
- B. Within sixty (60) days after the Divestiture Date, Respondent Bosch shall:
 - 1. make and deliver a written, unconditional, unilateral, irrevocable offer for a royalty-free, fully-paid-up, irrevocable, perpetual, non-exclusive license to the SPX Patent Lawsuit Patents and the SPX ACRRR Patents, solely to sell ACRRR Products in the United States to:
 - a. each of the defendants, other than RTI and Respondent Bosch or its successors, in the SPX Patent Lawsuit; and
 - b. the Persons listed in Confidential Exhibit I; and
 - 2. enter into such license if the offer is accepted.

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- C. For the length of time until the last SPX Patent Lawsuit Patent or SPX ACRRR Patent expires, Respondent Bosch shall make an irrevocable offer to any Third Party, upon request, that it will grant a royalty-free, fully-paid-up, irrevocable, perpetual, non-exclusive license to the SPX Patent Lawsuit Patents and the SPX ACRRR Patents, solely to sell ACRRR Products in the United States, and enter into such license if the offer is accepted.
- D. Within five (5) days of date this Order is final, Respondent Bosch shall provide the Letter of Assurance attached as Appendix E to this Order to the SAE IP Department of SAE International for the purpose of making a binding, irrevocable commitment to license the SPX Essential Patents to any Third Party on fair, reasonable and non-discriminatory terms for the purpose of practicing the SAE J2788 or SAE J2843 standard in any ACRRR Product sold in the United States. Such Letter of Assurance shall have an effective date before the date of adoption of the SAE J2788 and SAE J2843 standards, respectively.
- E. For the length of time until the last SPX Essential Patents expire, Respondent Bosch shall not revoke the Letter of Assurance attached as Appendix E of this Order. Pursuant to its commitment in the Letter of Assurance, Respondent Bosch shall cease and desist from, directly or indirectly, in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, initiating, or threatening to initiate, any Action demanding injunctive relief against any Third Party with respect to any, or for any alleged infringement of any claims of any, of the SPX Essential Patents including, but not limited to, Actions against manufacturers and customers. *Provided, however*, that Respondent Bosch shall be permitted to seek injunctive relief in an Action alleging infringement of the SPX Essential Patents if, and only if:

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1. a court determines that an SPX Essential Patent (other than an SPX ACRRR Patent or an SPX Patent Lawsuit Patent) is being used for a purpose other than as required to comply with the SAE J2788 and SAE J2843 standards, or
2. a Third Party:
 - a. states in writing it will not license one or more of the SPX Essential Patents consistent with the Letter of Assurance; or
 - b. refuses to license one or more of the SPX Essential Patents on terms that have been determined to comply with the Letter of Assurance through a process agreed upon by both parties or through a court.

V. (Asset Maintenance)**IT IS FURTHER ORDERED** that:

- A. Except in the course of performing its obligations under a Remedial Agreement or as expressly allowed pursuant to this Order, for a period of ten (10) years from the date this Order becomes final, Respondent Bosch shall not interfere, directly or indirectly, with the Bosch ACRRR Business of the Acquirer.

Provided however, that unless otherwise prohibited by the Order, nothing in this Paragraph V.A. shall prevent (a) Respondent Bosch (i) from competing for contracts or for the business of suppliers, distributors, resellers, or customers; or (ii) from engaging in competition for the research, development, manufacture, marketing and sales of ACRRR Products.

- B. During the time period before the Divestiture Date, Respondent Bosch shall, except as otherwise provided in the Order:

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1. take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear. Respondent Bosch shall not sell, transfer, encumber or otherwise impair the Bosch ACRRR Business (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability or competitiveness of the Bosch ACRRR Business including, but not limited to, hiring or offering to hire any Designated Employees;
2. retain all of Respondent Bosch's rights, title, and interest in the Bosch ACRRR Business, except for the disposition of inventory in the regular and ordinary course of business, consistent with past practices;
3. maintain the operations of the Bosch ACRRR Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Bosch ACRRR Business and shall use its best efforts to preserve the existing relationships with the following: car manufacturers, suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Bosch ACRRR Business including, but not limited to, continuing the homologation process for the Bosch ACRRR Products. Respondent Bosch's responsibilities shall include, but are not limited to, the following:

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- a. Respondent Bosch shall provide the Bosch ACRRR Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Bosch ACRRR Business;
- b. Respondent Bosch shall continue, at least at their scheduled pace, any additional expenditures for the Bosch ACRRR Business authorized prior to the date the Consent Agreement was signed by Respondent Bosch including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;
- c. Respondent Bosch shall provide such resources as may be necessary to respond to competition against the Bosch ACRRR Business and/or to prevent any diminution in sales of the Bosch ACRRR Business, world-wide, after the Acquisition Date and prior to the Divestiture Date including the maintenance of the homologation process for the Bosch ACRRR Products worldwide;
- d. Respondent Bosch shall provide such resources as may be necessary to maintain the competitive strength and positioning of the Bosch ACRRR Business in a business-as-usual manner and/or in accordance with the applicable Bosch ACRRR Business plan;
- e. Respondent Bosch shall make available for use by the Bosch ACRRR Business funds in a business-as-usual manner and/or in accordance with the applicable Bosch ACRRR Business plan sufficient to perform all routine maintenance or replacement, and all other

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maintenance or replacement of assets as may be necessary to maintain the Bosch ACRRR Business;

- f. Respondent Bosch shall provide the Bosch ACRRR Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business; and
- g. Respondent Bosch shall provide such support services to the Bosch ACRRR Business as were being provided to such business by Respondent Bosch as of the date the Consent Agreement was signed by Respondent Bosch.

4. maintain a work force substantially as large as, and with training and expertise equivalent to or better, what was associated with the Bosch ACRRR Business as of the Acquisition Date including, but not limited to, instructing Respondent Bosch's Distributors to maintain a work force substantially as large as, and with training and expertise equivalent to or better, what was associated with the Bosch ACRRR Business as of the Acquisition Date.

5. develop, sell, participate in the homologation process, and manufacture the Bosch ACRRR Product consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Bosch ACRRR Business pending divestiture.

- C. The purpose of this Paragraph V is to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business until the Divestiture Date, to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear.

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VI. (Confidentiality)

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final:

- A. Except in the course of performing its obligations under a Remedial Agreement, or as expressly allowed pursuant to this Order:
 - 1. Respondent Bosch shall not seek, receive, obtain, use, share or otherwise have or grant access to, directly or indirectly, any Confidential Business Information from or with any Person. Among other things, Respondent Bosch shall not use such Confidential Business Information:
 - a. to assist or inform Respondent Bosch employees who Develop, manufacture, solicit for sale, sell, or service Respondent Bosch products that compete with the products divested, sold, or distributed pursuant to this Order including, but not limited to, the employees of the ACRRR business owned and operated by SPX SS;
 - b. to interfere with any suppliers, distributors, resellers, or customers of the Acquirer;
 - c. to interfere with any contracts divested, assigned, or extended to the Acquirer pursuant to this Order; or
 - d. to interfere in any other way with the Acquirer pursuant to this Order or with the Bosch ACRRR Business divested pursuant to this Order.
 - 2. Respondent Bosch shall not disclose or convey Confidential Business Information, directly or indirectly, to any person except the Acquirer or

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other persons specifically authorized by the Acquirer to receive such information;

3. Respondent Bosch shall not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information to the employees associated with the SPX SS ACRRR Products; and
 4. Respondent Bosch shall institute procedures and requirements to ensure that:
 - a. Respondent Bosch employees with access to Confidential Business Information do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order; and
 - b. Respondent Bosch employees associated with the SPX SS ACRRR Products do not solicit, access or use any Confidential Business Information that they are prohibited under this Order from receiving for any reason or purpose.
- B. The requirements of this Paragraph VI do not apply to Confidential Business Information that Respondent Bosch demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:
1. was or becomes generally available to the public other than as a result of a disclosure by Respondent Bosch;
 2. is necessary to be included in mandatory regulatory filings; *provided, however*, that Respondent Bosch shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;

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3. was available, or becomes available, to Respondent Bosch on a non-confidential basis, but only if, to the knowledge of Respondent Bosch, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 4. is information the disclosure of which is consented to by the Acquirer;
 5. is necessary to be exchanged in the course of consummating the Acquisition or the transactions under the Remedial Agreement;
 6. is disclosed in complying with this Order;
 7. is information the disclosure of which is necessary to allow Respondent Bosch to comply with the requirements and obligations of the laws of the United States and other countries;
 8. is disclosed in defending legal claims, investigations or enforcement actions threatened or brought against Respondent Bosch or the Bosch ACRRR Business; or
 9. is disclosed in obtaining legal advice.
- C. The purpose of this Paragraph VI is to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business until the Divestiture Date, to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, to minimize the risk of disclosure and unauthorized use of Confidential Business Information of the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear.

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VII. (Monitor)**IT IS FURTHER ORDERED** that:

- A. Mr. Charles Johnson of BC Partners, LLC, shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Bosch and attached as Appendix C (“Monitor Agreement”) and Confidential Appendix C-1 (“Monitor Compensation”). The Monitor is appointed to assure that Respondent Bosch expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Monitor Agreement shall require that, no later than one (1) day after the Acquisition Date, Respondent Bosch transfers to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to this Order and the Order to Maintain Assets, and consistent with the purposes of this Order.
- C. No later than one (1) day after the Acquisition Date, Respondent Bosch shall, pursuant to the Monitor Agreement, transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to and consistent with, the purposes of this Order.
- D. Respondent Bosch shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent Bosch’s compliance with the terms of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission including, but not limited to:

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- a. Assuring that Respondent Bosch expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order; and
 - b. Monitoring any agreements between Respondent Bosch and the Acquirer.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Bosch's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related to Respondent Bosch's compliance with its obligations under the Order. Respondent Bosch shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Bosch's compliance with the Order.
4. The Monitor shall serve, without bond or other security, at the expense of Respondent Bosch on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Bosch, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
5. Respondent Bosch shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out

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of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Monitor.

6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent Bosch of its obligations under the Order.
 7. Respondent Bosch may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Bosch, which consent shall not be unreasonably withheld. If Respondent Bosch has not opposed, in

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writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Bosch of the identity of any proposed Monitor, Respondent Bosch shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Bosch shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Bosch's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.

G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

- H. A Monitor appointed pursuant to this Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

VIII. (Divestiture Trustee)

IT IS FURTHER ORDERED that:

- A. If Respondent Bosch has not fully complied with the obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Bosch ACRRR Business, and enter any other agreements, assignments, and licenses, in a manner that satisfies the requirements of this Order.

In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission,

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Respondent Bosch shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraph II. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VIII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Bosch to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Bosch, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Bosch has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Bosch of the identity of any proposed Divestiture Trustee, Respondent Bosch shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent Bosch shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VIII, Respondent Bosch shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

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1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Bosch ACRRR Business, and enter into all other agreements, licenses and assignments as described in Paragraph II of this Order.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to divest the Bosch ACRRR Business, and enter into all other agreements, licenses and assignments as described in Paragraph II of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities Related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Bosch shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Bosch shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Bosch shall extend the time for divestiture under this Paragraph

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VIII in an amount equal to the delay, as determined by the Commission.

4. The Divestiture Trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Bosch's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order.

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for assets and businesses to be divested pursuant to Paragraph II, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Bosch from among those approved by the Commission;

Provided further, however, that Respondent Bosch shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Bosch, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Bosch, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture

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Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Bosch, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent Bosch shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
9. The Divestiture Trustee shall report in writing to Respondent Bosch and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
10. Respondent Bosch may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such

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agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VIII.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the obligations under Paragraph II of this Order.
- G. The Divestiture Trustee(s) appointed pursuant to Paragraph VIII of this Order may be the same Person appointed as the Monitor pursuant to Paragraph VII of this Order, and the Order to Maintain Assets.

IX. (Employees)**IT IS FURTHER ORDERED** that:

- A. Beginning no later than the time Respondent Bosch signs the Consent Agreement in this matter until ninety (90) days after the Divestiture Date:
 1. Respondent Bosch shall provide the applicable Designated Employees with reasonable financial incentives to continue in their positions for such

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period. Such incentives shall include a continuation of all employee benefits offered by Respondent Bosch until the Designated Employee has been hired, the Acquirer has decided not to hire such Designated Employee, or the Designated Employee has declined, in writing, the Acquirer's offer, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to transition the Bosch ACRRR Business to the Acquirer;

2. Respondent Bosch shall not interfere with the interviewing, hiring, or employing of the Designated Employees by the Acquirer as described in this Order, and shall remove any impediments within the control of Respondent Bosch that may deter, or otherwise prevent or discourage the Designated Employees from accepting employment with the Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Bosch that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondent Bosch shall not make any counteroffer to a Designated Employee who receives a written offer of employment from the Acquirer, unless and until the Designated Employee has declined, in writing, the Acquirer's offer.
3. Respondent Bosch shall, in a manner consistent with local labor laws:
 - a. facilitate employment interviews between each Designated Employee and the Acquirer including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Acquirer and shall not

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discourage such employee from participating in such interviews;

- b. not interfere in employment negotiations between each Designated Employee and the Acquirer;
- c. and with respect to each Designated Employee who receives an offer of employment from the Acquirer:
 - (1) not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated Employee from being employed by the Acquirer, and shall not offer any incentive to the Designated Employee to decline employment with the Acquirer including, but not limited to, the Acquirer offering to hire the Designated Employee;
 - (2) cooperate with the Acquirer in effecting transfer of the Designated Employee to the employ of the Acquirer, if the Designated Employee accepts an offer of employment from the Acquirer;
 - (3) eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the Acquirer any information relating to the manufacture and sale of the Bosch ACRRR Product; and
 - (4) unless alternative arrangements are agreed upon with the Acquirer, retain the obligation to pay the benefits of any Designated Employee who accepts employment with the Acquirer including, but not limited to, all accrued bonuses, vested pensions, and other accrued benefits.

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Provided, however, that subject to the conditions of continued employment prescribed in this Order, this Paragraph IX.A. shall not prohibit Respondent Bosch from continuing to employ any Designated Employee under the terms of such employee's employment as in effect prior to the date of the written offer of employment from the Acquirer to such employee.

- B. Respondent Bosch shall not, for a period of two (2) years following the Divestiture Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any Acquirer employee, who is employed by the Acquirer to terminate his or her employment relationship with the Acquirer.

Provided, however, Respondent Bosch may place general advertisements for or conduct general searches for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's employees;

Provided further, however, Respondent Bosch may hire Designated Employees who apply for employment with Respondent Bosch as long as such employees were not solicited by Respondent Bosch in violation of this Paragraph.

X. (Prior Notice)

IT IS FURTHER ORDERED that, for a period of five (5) years from the date this Order becomes final, Respondent Bosch shall not, without providing advance written notification to the Commission in the manner described in this Paragraph X, directly or indirectly, acquire:

- A. any stock, share capital, equity, or other interest in any Person, corporate or non-corporate, that produces, designs, manufactures, or sells ACRRR Products in or into the United States; or

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- B. any business, whether by asset purchase or otherwise, that engages in or engaged in, at any time after the Acquisition, or during the six (6) month period prior to the Acquisition, the design, manufacture, production, or sale of ACRRR Products in or into the United States.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent Bosch and not of any other party to the transaction. Respondent Bosch shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Bosch shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

Provided, further, however, that prior notification shall not be required by this Paragraph VIII for any acquisition after which Respondent Bosch would hold no more than one percent (1%) of the outstanding securities or other equity interest in any Person described in this Paragraph VIII.

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XI. (Compliance Reports)**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent Bosch has fully complied with Paragraphs II.A., II.B., II.C., II.D., II.E., III.A., IV.B., IV.D., V.B., VII.A., VII.B., VII.C., VII.D., VIII, and IX.A. of this Order, Respondent Bosch shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Bosch shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor or Divestiture Trustee, if any Divestiture Trustee has been appointed pursuant to this Order. Respondent Bosch shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent Bosch shall include in its report copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent Bosch shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Respondent Bosch shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all

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persons Relating To this Order. Additionally, Respondent Bosch shall include in its compliance report whether or not it made any notifiable acquisitions pursuant to Paragraph XI. Respondent Bosch shall include a description of such acquisitions.

XII. (Reorganization)

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

- A. dissolution of such Respondent;
- B. acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

XIII. (Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent Bosch, Respondent Bosch shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Bosch and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent Bosch Relating To compliance with this Order, which copying services shall be provided by Respondent Bosch at its expense; and
- B. to interview officers, directors, or employees of Respondent Bosch, who may have counsel present, regarding such matters.

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XIV. (Termination)

IT IS FURTHER ORDERED that, except for any provision of this Order that terminates on its own terms, this Order shall terminate on the date when the term of the last SPX Essential Patent ends.

By the Commission, Commissioner Ohlhausen dissenting and Commissioner Wright not participating.

**CONFIDENTIAL APPENDIX A
BOSCH/MAHLE DIVESTITURE AGREEMENT**

**Redacted From the Public Version
But Incorporated by Reference**

Decision and Order

**CONFIDENTIAL APPENDIX B
DESIGNATED EMPLOYEES**

**Redacted From the Public Version
But Incorporated by Reference**

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APPENDIX C**MONITOR AGREEMENT**

This Monitor Agreement ("Monitor Agreement"), entered into this 13th day of November, 2012, between Robert Bosch GmbH ("Respondent") and BC Partners, LLC ("BC Partners") provides as follows:

WHEREAS, the Staff of the United States Federal Trade Commission (the "Commission"), in *In the Matter of Robert Bosch GmbH* and Respondent have agreed to an Agreement Containing Consent Order ("Consent Agreement"), incorporating a Decision and Order ("Decision and Order") with Respondent, which, among other things, requires Respondent to divest or transfer certain defined assets pursuant to the Asset Purchase Agreement between Respondent and Mahle Clevite Inc. ("Acquirer") and those ancillary agreements referenced therein (collectively, the "Remedial Agreement"), and provides for the appointment of a Monitor to ensure that Respondent complies with its obligations under the Remedial Agreement, and its obligations under the Decision & Order and the Order to Maintain Assets (collectively, "Orders");

WHEREAS, the staff of the Commission may appoint Mr. Johnson of BC Partners, LLC as such monitor (the "Monitor") pursuant to the Decision and Order to monitor Respondent's compliance with the terms of the Orders and with the Remedial Agreement referenced in the Orders, and Mr. Johnson of BC Partners has consented to such appointment;

WHEREAS, the Staff of the Commission on October 27, 2012, notified Respondent of selection of Mr. Charles Johnson of BC Partners as the Monitor, and Respondent agreed to the selection of Mr. Johnson of BC Partners, and is executing this Monitor Agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purpose of the Order;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Respondent is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or the Monitor under the Orders, until it has been approved by the Commission; and

WHEREAS, the parties to this Monitor Agreement intend to be legally bound;

NOW, THEREFORE, the parties agree as follows:

- (1) Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Decision and Order.
- (2) Respondent shall transfer to the Monitor, no later than one (1) day after the Acquisition Date, all of the powers, responsibilities and protections conferred upon the Monitor by the Decision and Order and the Order to Maintain Assets.
- (3) This Monitor Agreement confers upon the Monitor the powers and authority to monitor Respondent's compliance with the terms of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner

Decision and Order

APPENDIX C

consistent with the purposes of the Orders and in consultation with the Commission, including, but not limited to:

- a) Assuring that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders; and
 - b) Monitoring any agreements between Respondent and the Acquirer.
- (4) Respondent hereby agrees that Respondent will fully comply with all terms of the Orders requiring it to confer its rights, powers, authority and privileges upon the Monitor, or to impose upon itself any duties or obligations with respect to the Monitor, to enable the Monitor to perform the duties and responsibilities of the Monitor thereunder.
- (5) Respondent further agrees that:
- a) it will use commercially reasonable best efforts to provide the Monitor with prompt notification of significant meetings, including date, time and venue, scheduled after the execution of this Monitor Agreement, relating to the Remedial Agreement and such meetings may be attended by the Monitor or his representative, at the Monitor's option, or at the request of the Commission or staff of the Commission;
 - b) it will provide the Monitor the minutes of the above-referenced meetings as soon as practicable and, in any event, not later than those minutes are available to any employee of the Respondent;
 - c) it will provide the Monitor with electronic or hard copies, as may be appropriate, of all reports submitted to the Commission pursuant to the Decision and Order, simultaneous with the submission of such reports to the Commission, for the duration of the Monitor's term under this Monitor Agreement;
 - d) it will, subject to any demonstrated legally recognized privilege, grant the Monitor full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including but not limited to, its obligations related to the relevant assets; and
 - e) it will cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Orders.
- (6) Respondent shall promptly notify the Monitor of any significant written or oral communication that occurs after the date of this Monitor Agreement between the Commission and the Respondent related to the Remedial Agreement, together with copies of such communications.

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- (7) Within one (1) month from the date the Monitor is appointed, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.
- (8) The Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- (9) Respondent shall pay Monitor in accordance with the fee schedule attached hereto as Confidential Appendix C-1, for all reasonable time spent in the performance of the Monitor's duties and responsibilities, including all monitoring activities, all work in connection with the negotiation and preparation of this Monitor Agreement, all work in the nature of final reporting and file closure, and all reasonable and necessary travel time.
 - a) In addition, Respondent will pay (i) all out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties and responsibilities, including any telephone calls and auto, train or air travel in the performance of the Monitor's duties, and (ii) all fees and disbursements reasonably incurred by such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
 - b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.
- (10) The Monitor shall maintain the confidentiality of all information provided to the Monitor by Respondent. Such information shall be used by the Monitor only in connection with the performance of the Monitor's duties pursuant to this Monitor Agreement. Such information shall not be disclosed by the Monitor to any third party other than:
 - a) persons employed by, or working with the Monitor under this Monitor Agreement, in which case and such persons shall be informed and agree in writing to abide by the confidentiality obligations applicable to the Monitor, in accordance with Paragraph 12 below, or
 - b) persons employed at the Commission and working on this matter;
 - c) other persons if consented to by Respondent.
- (11) The Monitor shall maintain a record and inform the Commission of all persons (other than representatives of the Commission) to whom confidential information related to this Monitor Agreement has been disclosed.
- (12) The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

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- (13) Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall promptly return to the Respondent all materials provided to the Monitor by Respondent and shall destroy any material prepared by the Monitor that contains or reflects any confidential information of Respondent. Nothing herein shall abrogate the Monitor's duty of confidentiality, including the obligation to keep such information confidential for a period of ten (10) years after the termination of this Monitor Agreement.
- (14) The Monitor shall keep confidential for a period of ten (10) years all other aspects of the performance of his duties under this Monitor Agreement and shall not disclose any confidential or proprietary information relating thereto. To the extent that the Monitor wishes to retain any employee, agent, consultant or any other third party to assist the Monitor in accordance with the Orders, the Monitor shall ensure that, prior to being retained, such persons execute a confidentiality agreement in a form agreed upon by the Monitor and Respondent.
- (15) Nothing in this Monitor Agreement shall require Respondent to disclose any material or information that is subject to a legally recognized privilege or that Respondent is prohibited from disclosing by reason of law or any agreement with a third party.
- (16) Each party shall be reasonably available to the other to discuss any questions or issues either party may have concerning compliance with the Orders as they relate to Respondent.
- (17) Respondent hereby confirms its obligation to indemnify the Monitor and hold the Monitor harmless in accordance with and to the extent required by the Orders. Respondent shall indemnify the Monitor and hold Monitor harmless against any losses, claims damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.
- (18) Upon this Monitor Agreement becoming effective, the Monitor shall be permitted, and Respondent shall be required, to notify Acquirer with respect to Monitor's appointment.
- (19) In the event of a disagreement or dispute between Respondent and Monitor concerning Respondent's obligations under the Orders, and in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the Commission's Compliance Division to resolve this issue.
- (20) This Monitor Agreement shall be subject to the substantive law of the State of New York (regardless of the choice of law principles of New York or those of any other jurisdiction).
- (21) This Monitor Agreement shall terminate the earlier of: (a) the expiration or termination of the Decision and Order; (b) Respondent's receipt of written notice from the

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Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with a least (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of the Monitor; or (d) when Respondent's last obligation under the Orders that pertains to Monitor's service has been fully performed; provided, however, that the Commission may require that Respondent extend this Agreement or enter into an additional agreement as may be necessary or appropriate to accomplish the purpose of the Orders. The confidentiality obligations of this Monitor Agreement shall survive its termination.

- (22) In the event that, during the term of this Monitor Agreement, the Monitor becomes aware that he has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Monitor of any of his duties under this Monitor Agreement, the Monitor shall promptly inform both Respondent and the Commission of such conflict or potential conflict.
- (23) In the performance of his functions and duties under this Monitor Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his or her own business affairs.
- (24) It is understood that the Monitor will be serving under this Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Monitor and Respondent.
- (25) This Monitor Agreement is for the sole benefit of the parties hereto and their permitted assigns and the Commission, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder.
- (26) This Monitor Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces and any and all prior agreements or understandings, whether written or oral.
- (27) Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail, facsimile (with acknowledgement of receipt of such facsimile having been received), or electronic mail, to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

If to the Monitor, to:

Charles E. Johnson
BC Partners, LLC
225 Overture Way
Centreville, MD 21617
Phone: (203) 506-5626
Email: Charley23@mc.com

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If Respondent to:

Robert Bosch LLC
Attn: Judith Adler, Esq.
Assistant General Counsel
38000 Hills Tech Drive
Farmington Hills, MI 48331
Telephone: (248) 876-1163
Email: judith.adler@us.bosch.com

With copy to:

Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Attention: Michael Lindsay
Telephone: (612) 340-7819
Facsimile: (612) 340-2868
Email: lindsay.michael@dorsey.com

If to the Commission, to:

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attention: Secretary
Telephone: (202) 326-2514
Facsimile: (202) 326-2496

With a copy to:

Federal Trade Commission
601 New Jersey Avenue, N.W. Washington, D.C. 20001
Attention: Dan DuCore, Director for Compliance
Telephone: (202) 326-2526
Facsimile: (202) 326-3396
Email: dducore@ftc.gov

- (28) This Monitor Agreement shall not become binding until it has been approved by the Commission.
- (29) This Monitor Agreement may be signed in counterparts.

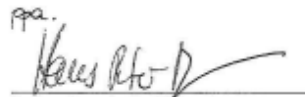
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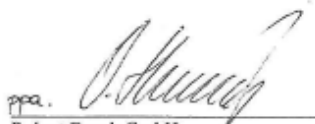
IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

RESPONDENT

MONITOR

ppa.

Robert Bosch GmbH

Charles Johnson
BC Partners, LLC

ppa.

Robert Bosch GmbH

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IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

RESPONDENT

ppa. [Signature]
Robert Bosch GmbH

MONITOR

[Signature]
Charles Johnson
BC Partners, LLC

ppa. [Signature]
Robert Bosch GmbH

**CONFIDENTIAL APPENDIX C-1
COMPENSATION PROVISION OF MONITOR
AGREEMENT**

**Redacted From the Public Version
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APPENDIX D

APPENDIX D
PARTIAL LIST OF SPX PATENTS RELATED TO ACCRRR PRODUCTS

<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
6,185,945 (US)	ISOLATED REFRIGERANT IDENTIFIER	A refrigerant handling system includes a cabinet having two service ports and two sample ports and housing recycling/recharging apparatus coupled to the service ports and a refrigerant identifier coupled to one of the sample ports and coupled through solenoid-actuated valves to the recharging/recycling apparatus.	07/22/1999	Issued 02/13/2001
7,845,178 (US)	A/C MAINTENANCE SYSTEM USING HEAT TRANSFER FROM THE CONDENSER TO THE OIL SEPARATOR FOR IMPROVED EFFICIENCY	An apparatus and methodology are provided for advantageously increasing heat transfer between the evaporator/oil separator ("accumulator") and condenser of a refrigerant recovery/recycling system, to increase the efficiency of the system and to simplify the system.	12/19/2006	Issued 12/07/2010
7,841,363 (US)	MODULAR UPGRADEABLE PNEUMATIC/HYDRAULIC MANIFOLD	An upgradeable A/C maintenance system and methodology is provided including one or more modular manifolds for mounting and fluidly connecting several components.	04/03/2007	Issued 11/30/2010

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Patent No. (or Publication No./Application No.)	Title	Short Description	Filing Date	Status
8,122,731 (US)	METHOD AND APPARATUS FOR CLEARING OIL INJECT CIRCUIT FOR CHANGING OIL TYPES	A refrigerant recovery unit is provided that can clear oil from an oil inject path in order to prepare the unit to switch over to a different kind of oil.	10/20/2008	Issued 02/28/2012
7,854,130 (US)	INTERNAL CLEARING FUNCTION FOR A REFRIGERANT RECOVERY/RECHARGE MACHINE	An apparatus and method providing a refrigeration servicing system that comprises a clean refrigerant source, a recovery circuit and a flushing circuit.	11/30/2005	Issued 12/21/2010
7,937,957 (US)	METHOD FOR USING HIGH PRESSURE REFRIGERANT FOR LEAK CHECKING A SYSTEM	A method for using refrigerant to check for a leak in a refrigerant system is provided that establishing fluid communication between a refrigerant recovery unit and a refrigerant system.	05/05/2008	Issued 05/10/2011
7,421,848 (US)	AUTOMATED HOSE CLEARING AFTER REFRIGERANT CHARGING METHOD	An automated hose clearing after refrigerant charge method and appropriate apparatus is provided. The method includes detecting a pressure differential between the interiors of a high and low pressure hose on an air conditioning charging unit, determining if a pressure differential exceeds a predetermined threshold and temporarily providing fluid communication between the interiors of the high and low pressure hoses.	11/10/2005	Issued 09/09/2008

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
6,202,433 (US)	PROTECTION SYSTEM FOR REFRIGERANT IDENTIFICATION DETECTOR	A flow control system allows sampling of refrigerant from a refrigerant recovery inlet of the system or, alternatively, the refrigerant recovery tank. Refrigerant selected from either source is metered and oil is filtered therefrom to provide a clean vapor refrigerant sample to a refrigerant identification detector. Oil separated from the refrigerant is returned to the oil drain of the main system for collection. In a preferred embodiment, a first conduit having a pressure control valve is coupled from a refrigerant inlet to the refrigerant recovery and recharging system.	10/05/1999	Issued 03/20/2001
6,138,462 (US)	REFRIGERANT RECOVERY AND RECHARGING SYSTEM WITH AUTOMATIC OIL DRAIN	A conduit is coupled to an oil accumulator with an orifice coupled in series with the conduit for limiting the flow of oil therethrough. A pressure sensor is coupled to the conduit for measuring the pressure in the conduit. An oil drain control solenoid valve is coupled to an electrical circuit also coupled to the pressure sensor for selectively opening the oil drain for the draining of oil into a collection tank without losing refrigerant.	03/19/2009	Issued 10/31/2000

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
6,134,899 (US)	REFRIGERANT RECOVERY AND RECHARGING SYSTEM WITH AUTOMATIC AIR PURGING	Conduits are coupled to a supply tank of refrigerant to allow the sensing of the amount of air present in the refrigerant tank and, upon the detection of air, the purging of air from the tank with a minimal loss of refrigerant. Preferably, the conduits include flow restrictors such as orifices and solenoid valves controlled by a microprocessor to sequentially sample and purge air from the refrigerant tank as required.	03/19/1999	Issued 10/24/2000
6,134,896 (US)	BACKGROUND TANK FILL	A refrigerant servicing system includes a main supply tank of refrigerant and an auxiliary tank which is coupled to the main tank by a valve which is selectively controlled by a circuit also coupled to weight and pressure sensors to assure the main tank has a level of refrigerant adequate for providing a continuous supply of refrigerant during servicing.	03/19/1999	Issued 10/24/2000

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
5,603,223 (US)	REFRIGERANT HANDLING WITH LUBRICANT SEPARATION AND DRAINING	In a refrigerant recovery system, a refrigerant compressor has an inlet for connection to a source of refrigerant to be recovered and an outlet for connection to a refrigerant storage container. A separator is connected in series with the compressor for separating lubricant from refrigerant either before or after passage of the refrigerant through the compressor.	01/02/1996	Issued 02/18/1997
5,597,533 (US)	APPARATUS FOR ANALYZING REFRIGERANT PROPERTIES	One or more properties of a refrigerant sample, such as composition, purity or both composition and purity, are analyzed for purposes of refrigerant recovery and reuse by providing a refrigerant cell having a chamber for containing a refrigerant sample and a passage for connecting the chamber to a source of refrigerant in vapor phase.	12/14/1995	Issued 01/28/1997

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
5,469,714 (US)	METHOD AND APPARATUS FOR ANALYZING REFRIGERANT PROPERTIES	One or more properties of a refrigerant are analyzed by evacuating a refrigerant sample vessel, drawing a refrigerant vapor sample into the vessel, and condensing the refrigerant sample within the vessel for measurement and indication of one or more desired properties of the liquid refrigerant sample. By drawing the sample refrigerant in vapor phase rather than liquid phase, the sample will be relatively free of lubricant, particulate or water contamination. The sample vessel can be readily cleaned by simple evacuation in preparation for the next measurement cycle.	09/30/1994	Issued 11/28/1995

Decision and Order

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<u>Patent No.</u> (or Publication No./Application No.)	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
5,371,019 (US)	METHOD AND APPARATUS FOR ANALYZING REFRIGERANT PROPERTIES	One or more properties of a refrigerant are analyzed by evacuating a refrigerant sample vessel, drawing a refrigerant vapor sample into the vessel, and condensing the refrigerant sample within the vessel for measurement and indication of one or more desired properties of the liquid refrigerant sample. By drawing the sample refrigerant in vapor phase rather than liquid phase, the sample will be relatively free of lubricant, particulate or water contamination. The sample vessel can be readily cleaned by simple evacuation in preparation for the next measurement cycle.	12/02/1993	Issued 12/06/1994.

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<u>Patent No.</u> <u>(or Publication</u> <u>No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
5,285,647 (US)	REFRIGERANT HANDLING SYSTEM WITH AIR PURGE AND MULTIPLE REFRIGERANT CAPABILITIES	A refrigerant handling system that includes a closed vessel for storing refrigerant and an apparatus for determining quantity of air captured within the vessel. A first sensor is operatively coupled to the vessel for providing a first electrical signal as a function of air/refrigerant vapor pressure within the vessel, and a second sensor is operatively coupled to the vessel for providing a second electrical signal as a function of air/refrigerant vapor temperature within the vessel.	03/08/1993	Issued 02/15/1994.
5,248,125 (US)	REFRIGERANT SERVICE SYSTEM WITH SELF-SEALING COUPLING	A self-sealing coupling for connection to a fluid fitting having an open end of predetermined configuration includes an adapter having an axial passage and an open end contour to be received over the open end of the fitting.	04/02/1992	Issued 09/28/1993.

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<u>Patent No.</u> (or Publication No./Application No.)	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
5,211,024 (US)	REFRIGERANT FILTRATION SYSTEM WITH FILTER CHANGE INDICATION	Apparatus for purification of a single refrigerant type, or of differing refrigerant types having differing density and moisture solubility characteristics, that includes a filter/drier unit for removing water from refrigerant passing therethrough and having a predetermined water absorption capacity.	04/20/1992	Issued 05/18/1993.
5,209,653 (US)	VACUUM PUMP	A vacuum pump that includes an electric motor and a pump module mounted to the motor housing with the motor shaft being rotatably coupled to a pumping mechanism within the pump module.	01/17/1992	Issued 05/11/1993.
5,203,177 (US)	REFRIGERANT HANDLING SYSTEM WITH INLET REFRIGERANT LIQUID/VAPOR FLOW CONTROL	A refrigerant recovery system includes a compressor and an evaporator connected to the compressor inlet for evaporating refrigerant passing therethrough to the compressor inlet from refrigerant equipment under service.	11/25/1991	Issued 04/20/1993.

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
5,182,918 (US)	REFRIGERANT RECOVERY SYSTEM	A refrigerant recovery system that includes a refrigerant accumulator having an inlet port for connection to the liquid port of equipment from which refrigerant is to be recovered, a vapor outlet port and a liquid outlet port.	05/26/1992	Issued 02/02/1993.
5,172,562 (US)	REFRIGERANT RECOVERY, PURIFICATION AND RECHARGING SYSTEM AND METHOD	In a combined recovery, purification and recharging system, a refrigerant compressor has an inlet coupled to a recovery control valve for connection to a refrigeration system under service from which refrigerant is to be recovered, purified and recharged into the system.	09/10/1991	Issued 12/22/1992.
5,158,747 (US)	APPARATUS FOR IDENTIFYING AND DISTINGUISHING DIFFERENT REFRIGERANTS	Apparatus for identifying and distinguishing between at least two different types of refrigerant includes a sample container having a fixed internal volume. Refrigerant to be tested is selectively admitted into the container in a vapor phase, vapor pressure of refrigerant within the container is measured, and admission of refrigerant into the container is terminated when the vapor pressure of refrigerant contained therein reaches a preselected level.	04/26/1991	Issued 10/27/1992.

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<u>Patent No.</u> (or Publication No./Application No.)	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
7,498,806 (US)	APPARATUS AND METHOD FOR ISOLATING NOISE FROM A SIGNAL	Apparatus and method for isolating noise from a signal A circuit is provided for isolating noise from an input signal to an Analog/Digital (A/D) converter.	06/20/2005	Issued 03/03/2009.
5,367,886 (US)	REFRIGERANT HANDLING SYSTEM WITH AIR PURGE AND SYSTEM CLEARING CAPABILITIES	A refrigerant handling system that includes an air purge chamber and a refrigerant pump for directing refrigerant into the air purge chamber so that the refrigerant collects in liquid phase at a lower portion of the chamber while air and other non- condensibles collect in a vapor space at the upper portion of the chamber over the refrigerant.	08/02/1993	Issued 11/29/1994.
5,261,249 (US)	REFRIGERANT HANDLING SYSTEM WITH AUXILIARY CONDENSER FLOW CONTROL	A refrigerant handling system that includes a compressor and an evaporator for adding heat to refrigerant fed to the compressor inlet. A first condenser is connected to the compressor outlet and disposed in heat exchange relationship to the evaporator for at least partially condensing refrigerant vapor from the compressor outlet by transfer of heat to refrigerant in the evaporator.	11/16/1992	Issued 11/16/1993.

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
12/960928 (US) (Application No.)	A/C MAINTENANCE SYSTEM USING HEAT TRANSFER FROM THE CONDENSER TO THE OIL SEPARATOR FOR IMPROVED EFFICIENCY	An apparatus and methodology are provided for advantageously increasing heat transfer between the evaporator/oil separator ("accumulator") and condenser of a refrigerant recovery/recycling sys...	12/06/2010	Published on 04/28/2011, 2011-0094247 A1
12/916051 (US) (Application No.)	MODULAR UPGRADEABLE PNEUMATIC/HYDRAULIC MANIFOLD	An upgradeable A/C maintenance system and methodology is provided including one or more modular manifolds for mounting and fluidly connecting several components.	10/29/2010	Published on 02/24/2011, 2011-0041540 A1

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<u>Patent No.</u> (or Publication No./Application No.)	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
12/059715 (US) (Application No.)	METHOD FOR RECOVERY AND RECHARGE OF BLEND REFRIGERANTS WITH BLEND SENT FOR RECLAMATION	A refrigerant recovery unit that diverts blended refrigerant withdrawn out of a refrigerant system to an external tank outside the refrigerant recovery unit for reclamation includes a recovery circuit coupled on one end to the refrigerant system and coupled on another end to the external tank, a controller in communication with the recovery circuit for controlling a transfer of the refrigerant withdrawn from the refrigerant system to the external tank, and a valve operatively engaged with the controller and the recovery circuit and operable to transfer the refrigerant withdrawn from the refrigerant system to the external tank for recycling or reclamation.	03/31/2008	Published on 10/01/2009. 2009-0241560 A1 Non- final rejection on 08/30/2012.

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
8,079,226 (US)	METHOD FOR ACCURATELY RECHARGING A/C SYSTEMS	A refrigerant recovery unit for accurately filling a refrigerant system with a refrigerant is provided which includes a storage vessel for holding refrigerant, sensors to assist in determining the pressure of the refrigerant in the storage vessel, a controller to control the flow of refrigerant from the storage vessel to the refrigerant system to be serviced, and a heating device to heat the refrigerant, which is activated only if heating is required, as determined by data received by the controller.	12/20/2007	Issued 12/20/2011
12/898299 (US) (Application No.)	VACUUM PUMP OIL CHANGING METHOD AND APPARATUS	Refrigerant processing equipment is provided. The refrigerant processing equipment may include: a vacuum pump; an outlet for draining vacuum pump lubricating oil from the vacuum pump; a fluid container; and a conduit configured to provide a fluid connection between the outlet and the container.	10/05/2010	Published 04/05/2012 - 2012-0079839 A1.

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<u>Patent No.</u> (or Publication No./Application No.)	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
12/974931 [US] (Application No.)	INTERNAL CLEARING FUNCTION FOR A REFRIGERANT RECOVERY/RECHARGE MACHINE	An apparatus and method providing a refrigeration servicing system that comprises a clean refrigerant source, a recovery circuit and a flushing circuit.	12/21/2010	Published 06/23/2011 – 2011-0146304 A1. Non-final rejection 09/19/2012.
11/709825 [US] (Application No.)	COMPONENT IDENTIFICATION SYSTEM AND METHOD	A component identification system and method, including an identifier associated with a replacement component, a memory to store one or more identifiers for each previously used component corresponding to the replacement component, and a predecessor to compare the identifier of the replacement component with the one or more stored identifiers of each previously used component.	02/23/2007	Published 08/28/2008, 2008-0205910 A1 Non-final rejection 02/23/2012, Request for Reconsideration Filed 07/23/2012.

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APPENDIX E

LETTER OF ASSURANCE

Please return to: SAE IP Department, SAE International, 400 Commonwealth Drive, Warrendale, PA
15096 USA

*No License is implied by submission of this Letter of
Assurance*

PATENT OWNER/ORGANIZATION:

Legal Name of Organization: Robert Bosch GmbH

PATENT OWNER'S CONTACT FOR LICENSE APPLICATION:

Name & Department:

Address:

Telephone: _____ Fax: _____

SAE TECHNICAL REPORT:

Number: J2788

Title: "HFC-134a (R-134a) Recovery/Recycle/Recharging Equipment for Mobile Air-Conditioning
Systems"

Number: J2843

Title: "R-1234yf [HFO-: I 234yf] Recovery/Recycle/Recharging Equipment for Flammable
Refrigerants for Mobile Air-Conditioning Systems"

PATENT HOLDER'S POSITION REGARDING LICENSING ESSENTIAL PATENT RIGHTS

The Patent Holder believes it owns or controls granted patent(s) and/or pending applications (formerly owned by SPX Corporation) which it believes could potentially be infringed by compliance with the proposed SAE Technical Report. Patent Holder states that its position with respect to licensing such patent(s) is as follows:

To the extent that a claim is essential to practicing either the SAE J2788 or J2843 standards, a license will be made available, on a claim by claim basis, as required for compliance with the SAE J2788 and J2843 standards, to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

A license that includes a reciprocity requirement, field of use restrictions or termination upon withdrawal of Proposed Technical Report shall not be deemed unreasonable.

SIGNATURE

Print name of authorized person: _____

Title of authorized person: _____

Signature of authorized person: _____ Date: _____

Decision and Order

APPENDIX F

APPENDIX F
SPX PATENT LAWSUIT PATENTS

<u>Patent No.</u> (or Publication No./Application No.)	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
5,335,512 (US)	REFRIGERANT RECOVERY DEVICE	A single pass refrigerant recovery device recovers refrigerant from a refrigeration system. The device includes at least one hose for withdrawing refrigerant from the refrigeration system and a first oil separator disposed downstream of the refrigerant hose. A filter is disposed downstream from the oil separator and a compressor is disposed downstream from the filter. A second oil separator is disposed downstream from the compressor, and the condenser is disposed downstream from the second oil separator. A moisture indicator is disposed downstream from the condenser, and a storage tank is disposed downstream from the moisture indicator. The refrigerant recovery device also contains an oil return line having a first end disposed downstream from the second oil separator, and a second end disposed upstream from the compressor.	12/07/1992	Issued 08/09/1994

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<u>Patent No. (or Publication No./Application No.)</u>	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
6,442,963 (US)	NON-CONDENSABLE PURGE TECHNIQUE USING REFRIGERANT TEMPERATURE OFFSET	In a refrigerant recycling system non-condensables are purged from a recovery vessel which stores refrigerant recovered from a vehicular refrigeration system. A programmed controller controls operation of a purge valve for purging to atmosphere non-condensables in the recovered refrigerant in accordance with a purge routine, wherein the temperature in the recovery vessel is measured, and a look-up table is consulted to ascertain a target pressure corresponding to the measured temperature plus an offset, and the pressure in the recovery vessel is measured.	06/22/2001	Issued 09/03/2002

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<u>Patent No.</u> (or <u>Publication</u> <u>No./Application No.</u>)	<u>Title</u>	<u>Short Description</u>	<u>Filing Date</u>	<u>Status</u>
7,726,137 (US)	METHOD AND APPARATUS FOR REFRIGERANT RECOVERY UNIT FILTER DRYER MAINTENANCE	A method and apparatus for ensuring a user to change a filter dryer of a refrigerant recovery unit having a refrigerant determining module that is configured to determine a condition of the refrigerant or an amount of the refrigerant that has passed through the filter dryer, or a condition of the filter dryer, an alert device that notifies the user to change the filter dryer in response to the condition, a pressure module that regulates the pressure in the filter dryer, and a pressure-sensing device that is configured to detect a change of pressure in response to filter dryer maintenance.	06/30/2006	Issued 06/01/2010
5,388,416 (US)	REFRIGERANT HANDLING METHOD WITH AIR PURGE AND SYSTEM CLEARING CAPABILITIES	A refrigerant handling system that includes an air purge chamber and a refrigerant pump for directing refrigerant into the air purge chamber so that the refrigerant collects in liquid phase at a lower portion of the chamber while air and other non-condensibles collect in a vapor space at the upper portion of the chamber over the refrigerant.	07/25/1994	Issued 02/14/1995

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APPENDIX G

To Whom It May Concern:

Robert Bosch GmbH is happy to announce that it has completed its acquisition of the Services Solutions business of SPX Corp. We are excited to welcome the Robinair brand of air conditioning service equipment to the Bosch family of products. Bosch looks forward to working with you to continue bringing Robinair products to our customers.

Version for Distributors Continues:

One thing that Bosch will not do, however, is to require distributors either to carry or advertise only the Robinair brand of ACS equipment on an exclusive basis. Although you are not required to carry or advertise any other brand of ACS equipment if you choose not to do so, Bosch will not enforce any provision in your agreement that would prevent you from doing so. Bosch generally does not use such provisions in its automotive aftermarket business, and as part of the Federal Trade Commission's review of the SPX acquisition, Bosch willingly offered to agree not to enforce such exclusivity provisions or to enter into them in the future. Bosch's agreement with the FTC and the FTC's order are available at [insert URL].

Version for Service Providers Continues:

One thing that Bosch will not do, however, is to require service providers to service only the Robinair brand of ACS equipment. Although you are not required to service any other brand of ACS equipment if you choose not to do so, Bosch will not enforce any provision in your agreement that would prevent you from doing so. Bosch generally does not use such provisions in its automotive aftermarket business, and as part of the Federal Trade Commission's review of the SPX acquisition, Bosch willingly offered to agree not to enforce such exclusivity provisions or to enter into them in the future. Bosch's agreement with the FTC and the FTC's order are available at [insert URL].

Thank you again for your work on Robinair products. We look forward to working together.

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**CONFIDENTIAL APPENDIX H
LIST OF THIRD PARTIES WITH AGREEMENTS
DESCRIBED IN PARAGRAPH III.A.**

**Redacted From the Public Version
But Incorporated by Reference**

**CONFIDENTIAL APPENDIX I
LIST OF THIRD PARTIES DESCRIBED
IN PARAGRAPH IV**

**Redacted From the Public Version
But Incorporated by Reference**

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of SPX Service Solutions (“SPX SS”) a subsidiary of SPX Corporation (“SPX”) by Robert Bosch GmbH (“Respondent Bosch”), and Respondent Bosch having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Bosch that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent Bosch has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings, and issues the following Order to Maintain Assets (“Asset Maintenance Order”).

1. Respondent Bosch is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its principal U.S. subsidiary, Robert

Order to Maintain Assets

Bosch LLC, a limited liability company organized, existing and doing business under the laws of the State of Delaware with its headquarters located at 38000 Hills Tech Drive, Farmington MI 48331.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that all capitalized terms used in this Asset Maintenance Order, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement. In addition to the definitions in Paragraph I of the Decision and Order attached to the Consent Agreement, the following definitions shall apply:

- A. “Decision and Order” means:
 1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. the Final Decision and Order issued and served by the Commission.
- B. “Orders” means the Decision and Order and this Asset Maintenance Order.

II. (Consents)

IT IS FURTHER ORDERED that prior to the Divestiture Date, Respondent Bosch shall secure all consents, assignments, and waivers from all Third Parties that are required for the Acquirer to manufacture and sell the Bosch ACRRR Products as of the Divestiture Date including, but not limited to, securing a lease for the York, Pennsylvania Facility, if such facilities are being leased to the Acquirer, and securing consents from all

Order to Maintain Assets

customers of the Bosch ACRRR Business whose contracts are being assigned or extended to the Acquirer pursuant to Paragraph II.A of the Decision and Order.

Provided, however, Respondent Bosch may satisfy this requirement with respect to any one or more leases or agreements by certifying that the Acquirer has executed such relevant agreements directly with each of the relevant Third Parties.

III. (Asset Maintenance)

IT IS FURTHER ORDERED that:

- A. From the date Respondent Bosch signs the Consent Agreement, Respondent Bosch shall appoint an executive responsible for overseeing and maintaining the Bosch ACRRR Business to be the primary contact between Respondent Bosch, Commission staff, and the Monitor. Respondent Bosch shall have such executive continue the oversight and maintenance of Bosch ACRRR Business until the Divestiture Date.
- B. During the time period before the Divestiture Date, Respondent Bosch shall, except as otherwise provided in the Orders:
 - 1. take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear. Respondent Bosch shall not sell, transfer, encumber or otherwise impair the Bosch ACRRR Business (other than in the manner prescribed in the Orders), nor take any action that lessens the full economic viability, marketability or competitiveness of the Bosch ACRRR Business including, but not limited to,

Order to Maintain Assets

hiring or offering to hire any Designated Employees;

2. retain all of Respondent Bosch's rights, title, and interest in the Bosch ACRRR Business, except for the disposition of inventory in the regular and ordinary course of business, consistent with past practices;
3. maintain the operations of the Bosch ACRRR Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Bosch ACRRR Business and shall use its best efforts to preserve the existing relationships with the following: car manufacturers, suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Bosch ACRRR Business including, but not limited to, continuing the homologation process for the Bosch ACRRR Products. Respondent Bosch's responsibilities shall include, but are not limited to, the following:
 - a. Respondent Bosch shall provide the Bosch ACRRR Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Bosch ACRRR Business;
 - b. Respondent Bosch shall continue, at least at their scheduled pace, any additional expenditures for the Bosch ACRRR Business authorized prior to the date the Consent Agreement was signed by Respondent Bosch including, but not limited to, all research,

Order to Maintain Assets

Development, manufacture, distribution, marketing and sales expenditures;

- c. Respondent Bosch shall provide such resources as may be necessary to respond to competition against the Bosch ACRRR Business and/or to prevent any diminution in sales of the Bosch ACRRR Business, world-wide, after the Acquisition Date and prior to the Divestiture Date including the maintenance of the homologation process for the Bosch ACRRR Products worldwide;
- d. Respondent Bosch shall provide such resources as may be necessary to maintain the competitive strength and positioning of the Bosch ACRRR Business in a business-as-usual manner and/or in accordance with the applicable Bosch ACRRR Business plan;
- e. Respondent Bosch shall make available for use by the Bosch ACRRR Business funds in a business-as-usual manner and/or in accordance with the applicable Bosch ACRRR Business plan sufficient to perform all routine maintenance or replacement, and all other maintenance or replacement of assets as may be necessary to maintain the Bosch ACRRR Business;
- f. Respondent Bosch shall provide the Bosch ACRRR Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business; and
- g. Respondent Bosch shall provide such support services to the Bosch ACRRR Business as were being provided to such business by Respondent Bosch as of the date the Consent Agreement was signed by Respondent Bosch.

Order to Maintain Assets

4. maintain a work force substantially as large as, and with training and expertise equivalent to or better, what was associated with the Bosch ACRRR Business as of the Acquisition Date including, but not limited to, instructing Respondent Bosch's Distributors to maintain a work force substantially as large as, and with training and expertise equivalent to or better, what was associated with the Bosch ACRRR Business as of the Acquisition Date.
 5. develop, sell, participate in the homologation process, and manufacture the Bosch ACRRR Product consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Bosch ACRRR Business pending divestiture.
- C. The purpose of this Paragraph III is to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business until the Divestiture Date, to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear.

IV. (Confidentiality)

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Asset Maintenance Order becomes final, or until the Decision and Order becomes final, whichever is earlier:

- A. Except in the course of performing its obligations under a Remedial Agreement, or as expressly allowed pursuant to the Orders, after the Divestiture Date:
1. Respondent Bosch shall not seek, receive, obtain, use, share or otherwise have or grant access to, directly or indirectly, any Confidential Business

Order to Maintain Assets

Information from or with any Person. Among other things, Respondent Bosch shall not use such Confidential Business Information:

- a. to assist or inform Respondent Bosch employees who Develop, manufacture, solicit for sale, sell, or service Respondent Bosch products that compete with the products divested, sold, or distributed pursuant to the Orders including, but not limited to, the employees of the ACRRR business owned and operated by SPX SS;
 - b. to interfere with any suppliers, distributors, resellers, or customers of the Acquirer;
 - c. to interfere with any contracts divested, assigned, or extended to the Acquirer pursuant to the Decision and Order; or
 - d. to interfere in any other way with the Acquirer pursuant to the Orders or with the Bosch ACRRR Business divested pursuant to the Decision and Order.
2. Respondent Bosch shall not disclose or convey Confidential Business Information, directly or indirectly, to any person except the Acquirer or other persons specifically authorized by the Acquirer to receive such information;
 3. Respondent Bosch shall not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information to the employees associated with the SPX SS ACRRR Products; and
 4. Respondent Bosch shall institute procedures and requirements to ensure that:

Order to Maintain Assets

- a. Respondent Bosch employees with access to Confidential Business Information do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of the Orders; and
 - b. Respondent Bosch employees associated with the SPX SS ACRRR Products do not solicit, access or use any Confidential Business Information that they are prohibited under the Orders from receiving for any reason or purpose.
- B. The requirements of this Paragraph IV do not apply to Confidential Business Information that Respondent Bosch demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:
1. was or becomes generally available to the public other than as a result of a disclosure by Respondent Bosch;
 2. is necessary to be included in mandatory regulatory filings; *provided, however*, that Respondent Bosch shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 3. was available, or becomes available, to Respondent Bosch on a non-confidential basis, but only if, to the knowledge of Respondent Bosch, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 4. is information the disclosure of which is consented to by the Acquirer;
 5. is necessary to be exchanged in the course of consummating the Acquisition or the transactions under the Remedial Agreement;

Order to Maintain Assets

6. is disclosed in complying with the Orders;
 7. is information the disclosure of which is necessary to allow Respondent Bosch to comply with the requirements and obligations of the laws of the United States and other countries;
 8. is disclosed in defending legal claims, investigations or enforcement actions threatened or brought against Respondent Bosch or the Bosch ACRRR Business; or
 9. is disclosed in obtaining legal advice.
- C. The purpose of this Paragraph IV is to maintain the full economic viability, marketability and competitiveness of the Bosch ACRRR Business until the Divestiture Date, to minimize any risk of loss of competitive potential for the Bosch ACRRR Business, to minimize the risk of disclosure and unauthorized use of Confidential Business Information of the Bosch ACRRR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Bosch ACRRR Business, except for ordinary wear and tear.

V. (Monitor)**IT IS FURTHER ORDERED** that:

- A. Mr. Charles Johnson of BC Partners, LLC, shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Bosch and attached as Appendix A ("Monitor Agreement") and Confidential Appendix A-1 ("Monitor Compensation"). The Monitor is appointed to assure that Respondent Bosch expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders.

Order to Maintain Assets

- B. The Monitor Agreement shall require that, no later than one (1) day after the Acquisition Date, Respondent Bosch transfers to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Orders, and consistent with the purposes of the Orders.
- C. No later than one (1) day after the Acquisition Date, Respondent Bosch shall, pursuant to the Monitor Agreement, transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to and consistent with, the purposes of the Orders.
- D. Respondent Bosch shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent Bosch's compliance with the terms of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent Bosch expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders; and
 - b. Monitoring any agreements between Respondent Bosch and the Acquirer.
 - 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - 3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Bosch's personnel, books,

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documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related to Respondent Bosch's compliance with its obligations under the Orders. Respondent Bosch shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Bosch's compliance with the Orders.

4. The Monitor shall serve, without bond or other security, at the expense of Respondent Bosch on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Bosch, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
5. Respondent Bosch shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Monitor.
6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report

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in writing to the Commission concerning performance by Respondent Bosch of its obligations under the Orders.

7. Respondent Bosch may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Bosch, which consent shall not be unreasonably withheld. If Respondent Bosch has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Bosch of the identity of any proposed Monitor, Respondent Bosch shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Bosch shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Bosch's

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compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.

- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- H. A Monitor appointed pursuant to this Asset Maintenance Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

VI. (Employees)**IT IS FURTHER ORDERED** that:

- A. Beginning no later than the time Respondent Bosch signs the Consent Agreement in this matter until ninety (90) days after the Divestiture Date:
 - 1. Respondent Bosch shall provide the applicable Designated Employees with reasonable financial incentives to continue in their positions for such period. Such incentives shall include a continuation of all employee benefits offered by Respondent Bosch until the Designated Employee has been hired, the Acquirer has decided not to hire such Designated Employee, or the Designated Employee has declined, in writing, the Acquirer's offer, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to transition the Bosch ACRRR Business to the Acquirer;
 - 2. Respondent Bosch shall not interfere with the interviewing, hiring, or employing of the Designated Employees by the Acquirer as described in the Orders, and shall remove any

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impediments within the control of Respondent Bosch that may deter, or otherwise prevent or discourage the Designated Employees from accepting employment with the Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Bosch that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondent Bosch shall not make any counteroffer to a Designated Employee who receives a written offer of employment from the Acquirer, unless and until the Designated Employee has declined, in writing, the Acquirer's offer.

3. Respondent Bosch shall, in a manner consistent with local labor laws:
 - a. facilitate employment interviews between each Designated Employee and the Acquirer including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Acquirer and shall not discourage such employee from participating in such interviews;
 - b. not interfere in employment negotiations between each Designated Employee and the Acquirer;
 - c. and with respect to each Designated Employee who receives an offer of employment from the Acquirer:
 - (1) not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated Employee from being employed by the Acquirer, and shall not offer any incentive to the Designated Employee to decline employment with the Acquirer including, but not limited to, the

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Acquirer offering to hire the Designated Employee;

- (2) cooperate with the Acquirer in effecting transfer of the Designated Employee to the employ of the Acquirer, if the Designated Employee accepts an offer of employment from the Acquirer;
- (3) eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the Acquirer any information relating to the manufacture and sale of the Bosch ACRRR Product; and
- (4) unless alternative arrangements are agreed upon with the Acquirer, retain the obligation to pay the benefits of any Designated Employee who accepts employment with the Acquirer including, but not limited to, all accrued bonuses, vested pensions, and other accrued benefits.

Provided, however, that subject to the conditions of continued employment prescribed in the Orders, this Paragraph VI.A. shall not prohibit Respondent Bosch from continuing to employ any Designated Employee under the terms of such employee's employment as in effect prior to the date of the written offer of employment from the Acquirer to such employee.

- B. Respondent Bosch shall not, for a period of two (2) years following the Divestiture Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any Acquirer employee, who is employed by the Acquirer to terminate his or her employment relationship with the Acquirer.

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Provided, however, Respondent Bosch may place general advertisements for or conduct general searches for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's employees;

Provided further, however, Respondent Bosch may hire Designated Employees who apply for employment with Respondent Bosch as long as such employees were not solicited by Respondent Bosch in violation of this Paragraph.

VII. (Compliance Reports)

IT IS FURTHER ORDERED that within thirty (30) days after the date this Asset Maintenance Order becomes final, and every sixty (60) days thereafter until the Asset Maintenance Order terminates, Respondent Bosch shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Asset Maintenance Order and the related Decision and Order; *provided, however,* that, after the Decision and Order in this matter becomes final, the reports due under this Asset Maintenance Order shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent Bosch pursuant to the Decision and Order.

VIII. (Reorganization)

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

- A. dissolution of such Respondent;
- B. acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent including, but not limited to, assignment and the creation or dissolution

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of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

IX. (Access)

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent Bosch, Respondent Bosch shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Bosch and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent Bosch Relating To compliance with the Orders, which copying services shall be provided by Respondent Bosch at its expense; and
- B. to interview officers, directors, or employees of Respondent Bosch, who may have counsel present, regarding such matters.

X. (Termination)

IT IS FURTHER ORDERED that this Asset Maintenance Order shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

Order to Maintain Assets

B. The later of:

1. the day after the divestitures pursuant to Paragraph II of the Decision and Order are accomplished, or
2. three (3) days after the related Decision and Order becomes final.

By the Commission, Commissioner Rosch and Commissioner Ohlhausen dissenting.

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APPENDIX A**MONITOR AGREEMENT**

This Monitor Agreement ("Monitor Agreement"), entered into this 13th day of November, 2012, between Robert Bosch GmbH ("Respondent") and BC Partners, LLC ("BC Partners") provides as follows:

WHEREAS, the Staff of the United States Federal Trade Commission (the "Commission"), in *In the Matter of Robert Bosch GmbH* and Respondent have agreed to an Agreement Containing Consent Order ("Consent Agreement"), incorporating a Decision and Order ("Decision and Order") with Respondent, which, among other things, requires Respondent to divest or transfer certain defined assets pursuant to the Asset Purchase Agreement between Respondent and Mahle Clevite Inc. ("Acquirer") and those ancillary agreements referenced therein (collectively, the "Remedial Agreement"), and provides for the appointment of a Monitor to ensure that Respondent complies with its obligations under the Remedial Agreement, and its obligations under the Decision & Order and the Order to Maintain Assets (collectively, "Orders");

WHEREAS, the staff of the Commission may appoint Mr. Johnson of BC Partners, LLC as such monitor (the "Monitor") pursuant to the Decision and Order to monitor Respondent's compliance with the terms of the Orders and with the Remedial Agreement referenced in the Orders, and Mr. Johnson of BC Partners has consented to such appointment;

WHEREAS, the Staff of the Commission on October 27, 2012, notified Respondent of selection of Mr. Charles Johnson of BC Partners as the Monitor, and Respondent agreed to the selection of Mr. Johnson of BC Partners, and is executing this Monitor Agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purpose of the Order;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Respondent is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or the Monitor under the Orders, until it has been approved by the Commission; and

WHEREAS, the parties to this Monitor Agreement intend to be legally bound;

NOW, THEREFORE, the parties agree as follows:

- (1) Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Decision and Order.
- (2) Respondent shall transfer to the Monitor, no later than one (1) day after the Acquisition Date, all of the powers, responsibilities and protections conferred upon the Monitor by the Decision and Order and the Order to Maintain Assets.
- (3) This Monitor Agreement confers upon the Monitor the powers and authority to monitor Respondent's compliance with the terms of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner

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consistent with the purposes of the Orders and in consultation with the Commission, including, but not limited to:

- a) Assuring that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders; and
 - b) Monitoring any agreements between Respondent and the Acquirer.
- (4) Respondent hereby agrees that Respondent will fully comply with all terms of the Orders requiring it to confer its rights, powers, authority and privileges upon the Monitor, or to impose upon itself any duties or obligations with respect to the Monitor, to enable the Monitor to perform the duties and responsibilities of the Monitor thereunder.
- (5) Respondent further agrees that:
- a) it will use commercially reasonable best efforts to provide the Monitor with prompt notification of significant meetings, including date, time and venue, scheduled after the execution of this Monitor Agreement, relating to the Remedial Agreement and such meetings may be attended by the Monitor or his representative, at the Monitor's option, or at the request of the Commission or staff of the Commission;
 - b) it will provide the Monitor the minutes of the above-referenced meetings as soon as practicable and, in any event, not later than those minutes are available to any employee of the Respondent;
 - c) it will provide the Monitor with electronic or hard copies, as may be appropriate, of all reports submitted to the Commission pursuant to the Decision and Order, simultaneous with the submission of such reports to the Commission, for the duration of the Monitor's term under this Monitor Agreement;
 - d) it will, subject to any demonstrated legally recognized privilege, grant the Monitor full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including but not limited to, its obligations related to the relevant assets; and
 - e) it will cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Orders.
- (6) Respondent shall promptly notify the Monitor of any significant written or oral communication that occurs after the date of this Monitor Agreement between the Commission and the Respondent related to the Remedial Agreement, together with copies of such communications.

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- (7) Within one (1) month from the date the Monitor is appointed, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.
- (8) The Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- (9) Respondent shall pay Monitor in accordance with the fee schedule attached hereto as Confidential Appendix C-1, for all reasonable time spent in the performance of the Monitor's duties and responsibilities, including all monitoring activities, all work in connection with the negotiation and preparation of this Monitor Agreement, all work in the nature of final reporting and file closure, and all reasonable and necessary travel time.
 - a) In addition, Respondent will pay (i) all out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties and responsibilities, including any telephone calls and auto, train or air travel in the performance of the Monitor's duties, and (ii) all fees and disbursements reasonably incurred by such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
 - b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.
- (10) The Monitor shall maintain the confidentiality of all information provided to the Monitor by Respondent. Such information shall be used by the Monitor only in connection with the performance of the Monitor's duties pursuant to this Monitor Agreement. Such information shall not be disclosed by the Monitor to any third party other than:
 - a) persons employed by, or working with the Monitor under this Monitor Agreement, in which case and such persons shall be informed and agree in writing to abide by the confidentiality obligations applicable to the Monitor, in accordance with Paragraph 12 below, or
 - b) persons employed at the Commission and working on this matter;
 - c) other persons if consented to by Respondent.
- (11) The Monitor shall maintain a record and inform the Commission of all persons (other than representatives of the Commission) to whom confidential information related to this Monitor Agreement has been disclosed.
- (12) The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

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- (13) Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall promptly return to the Respondent all materials provided to the Monitor by Respondent and shall destroy any material prepared by the Monitor that contains or reflects any confidential information of Respondent. Nothing herein shall abrogate the Monitor's duty of confidentiality, including the obligation to keep such information confidential for a period of ten (10) years after the termination of this Monitor Agreement.
- (14) The Monitor shall keep confidential for a period of ten (10) years all other aspects of the performance of his duties under this Monitor Agreement and shall not disclose any confidential or proprietary information relating thereto. To the extent that the Monitor wishes to retain any employee, agent, consultant or any other third party to assist the Monitor in accordance with the Orders, the Monitor shall ensure that, prior to being retained, such persons execute a confidentiality agreement in a form agreed upon by the Monitor and Respondent.
- (15) Nothing in this Monitor Agreement shall require Respondent to disclose any material or information that is subject to a legally recognized privilege or that Respondent is prohibited from disclosing by reason of law or any agreement with a third party.
- (16) Each party shall be reasonably available to the other to discuss any questions or issues either party may have concerning compliance with the Orders as they relate to Respondent.
- (17) Respondent hereby confirms its obligation to indemnify the Monitor and hold the Monitor harmless in accordance with and to the extent required by the Orders. Respondent shall indemnify the Monitor and hold Monitor harmless against any losses, claims damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.
- (18) Upon this Monitor Agreement becoming effective, the Monitor shall be permitted, and Respondent shall be required, to notify Acquirer with respect to Monitor's appointment.
- (19) In the event of a disagreement or dispute between Respondent and Monitor concerning Respondent's obligations under the Orders, and in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the Commission's Compliance Division to resolve this issue.
- (20) This Monitor Agreement shall be subject to the substantive law of the State of New York (regardless of the choice of law principles of New York or those of any other jurisdiction).
- (21) This Monitor Agreement shall terminate the earlier of: (a) the expiration or termination of the Decision and Order; (b) Respondent's receipt of written notice from the

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Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with a least (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of the Monitor; or (d) when Respondent's last obligation under the Orders that pertains to Monitor's service has been fully performed; provided, however, that the Commission may require that Respondent extend this Agreement or enter into an additional agreement as may be necessary or appropriate to accomplish the purpose of the Orders. The confidentiality obligations of this Monitor Agreement shall survive its termination.

- (22) In the event that, during the term of this Monitor Agreement, the Monitor becomes aware that he has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Monitor of any of his duties under this Monitor Agreement, the Monitor shall promptly inform both Respondent and the Commission of such conflict or potential conflict.
- (23) In the performance of his functions and duties under this Monitor Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his or her own business affairs.
- (24) It is understood that the Monitor will be serving under this Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Monitor and Respondent.
- (25) This Monitor Agreement is for the sole benefit of the parties hereto and their permitted assigns and the Commission, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder.
- (26) This Monitor Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces and any and all prior agreements or understandings, whether written or oral.
- (27) Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail, facsimile (with acknowledgement of receipt of such facsimile having been received), or electronic mail, to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

If to the Monitor, to:

Charles E. Johnson
BC Partners, LLC
225 Overture Way
Centreville, MD 21617
Phone: (203) 506-5626
Email: Charley23@mc.com

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If Respondent to:

Robert Bosch LLC
Attn: Judith Adler, Esq.
Assistant General Counsel
38000 Hills Tech Drive
Farmington Hills, MI 48331
Telephone: (248) 876-1163
Email: judith.adler@us.bosch.com

With copy to:

Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
Attention: Michael Lindsay
Telephone: (612) 340-7819
Facsimile: (612) 340-2868
Email: lindsay.michael@dorsey.com

If to the Commission, to:

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Attention: Secretary
Telephone: (202) 326-2514
Facsimile: (202) 326-2496

With a copy to:

Federal Trade Commission
601 New Jersey Avenue, N.W. Washington, D.C. 20001
Attention: Dan Ducore, Director for Compliance
Telephone: (202) 326-2526
Facsimile: (202) 326-3396
Email: dducore@ftc.gov

- (28) This Monitor Agreement shall not become binding until it has been approved by the Commission.
- (29) This Monitor Agreement may be signed in counterparts.

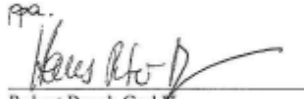
Order to Maintain Assets

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IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

RESPONDENT

MONITOR

ppa.

Robert Bosch GmbH

Charles Johnson
BC Partners, LLC

ppa.

Robert Bosch GmbH

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APPENDIX A

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

RESPONDENT

[Signature]
Robert Bosch GmbH

MONITOR

[Signature]
Charles Johnson
BC Partners, LLC

[Signature]
Robert Bosch GmbH

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**CONFIDENTIAL APPENDIX A-1
COMPENSATION PROVISION OF MONITOR
AGREEMENT**

**Redacted From the Public Record
But Incorporated by Reference**

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted from Robert Bosch GmbH (“Bosch”), subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”), which is designed to remedy the anticompetitive effects resulting from Bosch’s acquisition of SPX Service Solutions U.S. LLC (“SPX Service Solutions”) from SPX Corporation (“SPX”) and to remedy anticompetitive conduct by SPX in violation of Section 5 of the FTC Act.

Under the terms of the Consent Agreement, Bosch is required to (1) divest its air conditioning recycling, recovery, and recharge (“ACRRR”) business, including RTI Technologies, Inc. (“RTI”), to Mahle Clevite, Inc. (“Mahle”) by December 31, 2012; (2) terminate agreements with any persons that limit the ability of SPX’s competitors, including Bosch, from advertising, servicing, distributing, or selling any ACRRR product in the U.S. market; and (3) make available for licensing certain patents which may be used in the implementation of two industry standards established by SAE International, an industry association responsible for setting standards for products so that they comply with regulations of the U.S. Environmental Agency (“EPA”). The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

On January 23, 2012, Bosch entered into an agreement to acquire the SPX Service Solutions business from SPX. The Commission’s complaint alleges the facts described below and that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for ACRRR devices.

Analysis to Aid Public Comment

II. The Parties

Bosch, headquartered in Stuttgart, Germany and with U.S. operations based in Broadview, Illinois, is a global supplier of automotive and industrial technology, consumer goods, and building technology. North American sales represent 18% of Bosch's revenues, and Automotive Technology is Bosch's largest business sector in North America. Bosch is the second leading U.S. supplier of ACRRR equipment. It acquired RTI in 2010, and sells ACRRR equipment under both the Bosch and RTI brand, which account for approximately 10% of the U.S. ACRRR market.

Headquartered in Warren, Michigan, SPX is a diversified global supplier of highly engineered products for the following industries: power and energy, food and beverage, vehicle and transit, infrastructure and industrial processes. SPX's Service Solutions business is a global supplier of automotive tools, equipment and services, for both original equipment manufacturers ("OEMs") and aftermarket repair shops and technicians. SPX's Robinair brand is the leading supplier of ACRRR equipment in the United States, accounting for over 80% of sales in that market.

III. The Product And Structure Of The Market

Bosch's proposed acquisition of SPX Service Solutions would create a virtual monopoly in the ACRRR market. ACRRR devices are stand-alone pieces of equipment used by automotive technicians to remove refrigerant from a vehicle's on-board air conditioning system, store the refrigerant while the air conditioning system is being serviced, and recycle the refrigerant back into the system, adding more as necessary. These tools are required to repair or service motor vehicle air conditioning systems because no other equipment performs the removal, recycling, and recharging functions while staying compliant with EPA regulations prohibiting refrigerant from escaping into the atmosphere. Devices that only extract refrigerant from air conditioning systems but do not recycle or recharge them are not cost-effective alternatives because they do not store or dispose of extracted refrigerant as required. As a result, if the price of

Analysis to Aid Public Comment

ACRRR equipment were to increase 5-10%, customers would not switch to extraction-only equipment or to equipment that flushes other fluids from vehicles, which cannot be used in its place.

The relevant geographic area in which to evaluate the market for ACRRR equipment is the United States. Environmental regulations vary by country, so ACRRR machines designed to adhere to the regulations of one country are not necessarily compatible with those of other countries. In addition, differing electrical power specifications across the world necessitate that the internal pumps and motors vary to meet differing specification. As a result, purchasers in the United States could not turn to suppliers in other countries for ACRRR equipment.

SPX's Robinair brand holds a dominant position in the ACRRR market, with a share of over 80%. Bosch's RTI and Bosch brands comprise approximately 10% of the market and are Robinair's most significant competition. Four other firms selling ACRRR equipment in the U.S. together account for the balance of ACRRR sales. Thus, the combination of Bosch and SPX would confer a virtual monopoly position on Bosch. The elimination of the direct competition between Robinair and Bosch would allow the combined entity to exercise market power by unilaterally increasing price, slowing innovation, or lowering its levels of service.

IV. Entry

Entry into the ACRRR market sufficient to deter the anticompetitive effects of this transaction is unlikely to occur in the next two years. While designing and engineering a system to work effectively and meet industry standards may be possible within a relatively short time frame, other barriers, including the challenges of obtaining effective distribution and developing a service network, make successful entry very difficult. Advertising through leading automotive wholesale distributors is the most effective means of promoting ACRRR to independent auto repair shops and rapid-turnaround repair of ACRRR equipment is critical because repair shops cannot provide air conditioning service without this equipment. Obtaining effective distribution and service networks has been especially challenging for competitors of SPX because of limitations SPX puts on

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distributors and service centers that sell and service Robinair-brand ACRRR. Another factor affecting the likelihood of significant new entry or expansion is the costs associated with meeting industry standards, which are established by SAE International, formerly the Society of Automotive Engineers.

IV. Effects Of The Acquisition

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. ACRRR device market. The transaction would combine SPX's Robinair brand ACRRR, that already commands over 80% of the market with its leading competitor, Bosch, with its Bosch- and RTI ACRRR brands, with approximately 10% of the market, creating a near-monopolist with a share of over 90%. The impact of eliminating the competition between Bosch and SPX in the ACRRR market is highly likely to result in consumers, who are automotive repair shops and technicians, paying higher prices for ACRRR devices.

V. The Consent Agreement**A. The Merger Remedy**

The proposed Consent Agreement eliminates the competitive concerns raised by Bosch's proposed acquisition of SPX Service Solutions by requiring the divestiture of Bosch's assets relating to the manufacture and sale of ACRRR devices in the United States, including the RTI business. Bosch and SPX have agreed to sell the U.S. ACRRR assets to Mahle Clevite, Inc. ("Mahle") before December 31, 2012.

Mahle possesses the resources, industry experience, and financial viability to successfully purchase and manage the divestiture assets and continue as an effective competitor in the ACRRR market. Mahle, headquartered in Stuttgart, Germany with U.S. operations based in Farmington, Michigan, is a supplier and development partner to the automotive and engine industry. Mahle's diverse product lines include aftermarket parts and automotive equipment sold a similar customer base as RTI. Mahle's significant size and global presence will allow it to quickly support additional expansion in the ACRRR market and

Analysis to Aid Public Comment

replace the loss of competition presented by Bosch's acquisition of SPX SS.

Pursuant to the Consent Agreement, Mahle would receive all the assets necessary to operate Bosch's current U.S. ACRRR business, including RTI's operations in York, Pennsylvania which include the RTI manufacturing plant, current inventory, and relevant intellectual property. In addition to ensuring that current RTI employees will continue their employment with Mahle, the Consent Agreement requires Bosch to provide access to certain key employees who may be necessary to help facilitate the transition and fully establish the Bosch ACRRR business within Mahle. The Consent Agreement also requires Bosch to transfer all relevant intellectual property and all contracts and confidential business information associated with the ACRRR business. In addition, the Consent Agreement requires Bosch to license, royalty-free, certain SPX patents that may be essential to the practice of two industry standards to Mahle.

B. The Conduct Remedy

In addition, the Consent Agreement includes a provision that requires Bosch to make certain patents available to its competitors in the ACRRR market. During its merger investigation, the Commission uncovered evidence that SPX holds certain potentially standard-essential patents necessary for implementing two SAE International ACRRR industry standards, J-2788 and J-2843, which govern the operation of ACRRR machines that handle the two most common types of air conditioning refrigerant in vehicles today. SAE International adopted J-2788 and J-2843 while SPX was a member of the SAE Interior Climate Control Committee, the committee responsible for developing the standards. SAE International's rules include an obligation by working group members to disclose any patents or patent applications that would be essential to the practice of a standard being developed, and to offer a license to such patents on either royalty-free or fair, reasonable, and non-discriminatory ("FRAND") terms. After the standards were adopted, SPX issued a letter of assurance to SAE International acknowledging that it held patents that were potentially essential to both standards and committing to license them under FRAND terms. Following this letter of assurance, however, SPX continued to seek previously

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initiated injunction actions against competitors using those patents to implement the SAE International standards.

SPX's suit for injunctive relief against implementers of its standard essential patents constitutes a failure to license its standard-essential patents under the FRAND terms it agreed to while participating in the standard setting process, and is an unfair method of competition actionable under Section 5 of the FTC Act. Standard setting is "widely acknowledged to be one of the engines driving the modern economy." Participants in the standard setting process rely on the licensing commitments made by patent holders during the standard setting process to protect them against patent hold-up. Patent hold-up can occur when, after an entire industry has become "locked in" to practicing a standard, a patent holder reneges on a licensing obligation and seeks to exercise the market power that accrues to a patent by virtue of being incorporated in the standard. FRAND commitments and licensing obligations, such as those at issue here, are an important way to mitigate the risk of patent hold-up, and are common in the standard setting process. Seeking injunctions against willing licensees of FRAND-encumbered standard essential patents, as SPX is alleged to have done here, is a form of FRAND evasion and can reinstate the risk of patent hold-up that FRAND commitments are intended to ameliorate. As the Commission has previously explained, "negotiation that occurs under threat of an [injunction] may be weighted heavily in favor of the patentee in a way that is in tension with the [F]RAND commitment. High switching costs combined with the threat of an [injunction] could allow a patentee to obtain unreasonable licensing terms despite its [F]RAND commitment, not because its invention is valuable, but because implementers are locked in to practicing the standard."

Bosch has agreed in the Consent Order to resolve the violations committed by SPX. The Consent Order requires Bosch to offer a royalty-free license to all potential implementers for certain enumerated patents for the purpose of manufacturing ACRRR devices in the United States. While a royalty-free license may not be an appropriate remedy in every case involving evasion of a FRAND commitment, in this matter Bosch has chosen to license these patents to the buyer of its ACRRR business, Mahle, royalty-free, and a license to other market place

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participants on the same terms is necessary to ensure that the merger remedy is not inequitable in application. The Consent Order further requires Bosch to deliver to the SAE a letter of assurance that makes a binding, irrevocable commitment to license any additional patents that Bosch may acquire in the future that are essential to practicing the J-2788 or J-2843 standards on FRAND terms to any third party that wishes to use such patents to produce an ACRRR device for sale in the United States. Pursuant to its FRAND obligations, Bosch has agreed not to seek injunctive relief against such third parties, unless the third party refuses in writing to license the patent consistent with the letter of assurance, or otherwise refuses to license the patent on terms that comply with the letter of assurance as determined by a process agreed upon by both parties (e.g., arbitration) or a court.

The Consent Agreement also requires that Bosch discontinue its restrictive arrangements with wholesale distributors and independent service technicians. Bosch will be prevented from enforcing any agreement that restricts a distributor or repair service provider from advertising, servicing, distributing, or selling any ACRRR product from any third party in the United States. Bosch will be prevented from entering into such agreements for ten years after the date of the Order. This provision allows entry by other competitors, and will allow the existing competitors in the ACRRR market, including Mahle, to more easily have access to leading wholesale distributors and service providers to assemble repair networks to which customers can turn after they have purchased ACRRRs.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

Statement of the Commission

STATEMENT OF THE FEDERAL TRADE COMMISSION

The Federal Trade Commission (“Commission”) has voted to issue for public comment a Complaint and Order against Robert Bosch GmbH (“Bosch”) designed to remedy the allegedly anticompetitive effects of Bosch’s acquisition of SPX Services (“SPX”), a division of SPX Corporation. The Commission has reason to believe that the proposed acquisition would cause significant anticompetitive harm to consumers by creating a virtual monopoly in the market for automobile air conditioning servicing equipment known as “air conditioning recycling, recovery, and recharge devices” or “ACRRRs.” The proposed Order eliminates the anticompetitive concerns raised by the proposed acquisition by requiring the divestiture of Bosch’s assets relating to the manufacture and sale of ACRRRs to Mahle Clevite, Inc. The proposed Order further requires Bosch to discontinue restrictive arrangements SPX maintained with wholesale distributors and independent service technicians.

The Complaint also alleges that, before its acquisition by Bosch, SPX reneged on a licensing commitment made to two standard-setting bodies to license its standards-essential patents (“SEPs”) relating to ACRRRs on fair, reasonable and non-discriminatory terms (“FRAND”) by seeking injunctions against willing licensees of those SEPs.¹ We have reason to believe this conduct tended to impair competition in the market for these important automobile air conditioning servicing devices. To its credit, Bosch has abandoned these claims for injunctive relief and agreed to license the SEPs at issue.

This case is another chapter in the Commission’s longstanding commitment to safeguard the integrity of the standard-setting process.² Standard setting can deliver substantial benefits to

¹ The licensing obligation in this matter was a FRAND obligation, although RAND (reasonable and non-discriminatory) licensing obligations raise similar issues.

² See *In re Dell Computer Corp.*, 121 F.T.C. 616 (1996); *In re Union Oil Company of California*, 2004 FTC LEXIS 115 (July 7, 2004); *In re Rambus, Inc.*, Dkt. No. 9302, 2006 FTC LEXIS 101 (Aug. 20, 2006), *rev’d*, *Rambus Inc. v. F.T.C.*, 522 F.3d 456 (D.C. Cir. 2008); *In re Negotiated Data Solutions LLC*, FTC File No. 051-0094, Decision and Order (Jan. 23, 2008), available at <http://www.ftc.gov/os/caselist/0510094/080122do.pdf>.

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American consumers, promoting innovation, competition, and consumer choice. But standard setting also risks harm to consumers. Because standard setting often displaces the normal competitive process with the collective decision-making of competitors, preserving the integrity of the standard-setting process is central to ensuring standard setting works to the benefit of, rather than against, consumers.³ The Commission's action today does just that.

As explained in the Commission's unanimous filings before the United States International Trade Commission in June 2012, the threat of injunctive relief "in matters involving RAND-encumbered SEPs, where infringement is based on implementation of standardized technology, has the potential to cause substantial harm to U.S. competition, consumers and innovation."⁴ By threatening to exclude standard-compliant products from the marketplace, a SEP holder can demand and realize royalty payments that reflect the investments firms make to develop and implement the standard, rather than the economic value of the technology itself.⁵ This can harm incentives to

³ See, e.g., *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500-01 (1988) (noting that "private standard-setting associations have traditionally been objects of antitrust scrutiny" because of their potential use as a means for anticompetitive agreements among competitors).

⁴ Third Party United States Federal Trade Commission's Statement on the Public Interest filed on June 6, 2012 in *In re Certain Wireless Communication Devices, Portable Music & Data Processing Devices, Computers and Components Thereof*, Inv. No. 337-TA-745, available at www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf and in *In re Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, Inv. No. 337-TA-752, available at <http://www.ftc.gov/os/2012/06/1206ftcgamingconsole.pdf>.

⁵ *Id.* at 3-4 ("[A] royalty negotiation that occurs under threat of an exclusion order may be weighted heavily in favor of the patentee in a way that is in tension with the RAND commitment. High switching costs combined with the threat of an exclusion order could allow a patentee to obtain unreasonable licensing terms despite its RAND commitment, not because its invention is valuable, but because implementers are locked in to practicing the standard. The resulting imbalance between the value of patented technology and the rewards for innovation

may be especially acute where the exclusion order is based on a patent covering a small component of a complex multicomponent product. In these ways, the threat of an exclusion order may allow the holder of a RAND-

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develop standard-compliant products. The threat of an injunction can also lead to excessive royalties that can be passed along to consumers in the form of higher prices.

There is increasing judicial recognition, coinciding with the view of the Commission, of the tension between offering a FRAND commitment and seeking injunctive relief.⁶ Patent holders that seek injunctive relief against willing licensees of their FRAND-encumbered SEPs should understand that in appropriate cases the Commission can and will challenge this conduct as an unfair method of competition under Section 5 of the FTC Act.⁷ Importantly, stopping this conduct using a stand-alone Section 5 unfair methods of competition claim, rather than one based on the Sherman Act, minimizes the possibility of follow-on treble damages claims. Violations of Section 5 that are not also violations of the antitrust laws do not support valid federal antitrust claims for treble damages. There is also no private right of action under Section 5, and a Section 5 action has no preclusive effect in subsequent federal court cases.

In her dissent, Commissioner Ohlhausen claims that today's decision imposes liability on protected petitioning activity and

encumbered SEP to realize royalty rates that reflect patent hold-up, rather than the value of the patent relative to alternatives, which could raise prices to consumers while undermining the standard setting process.”).

⁶ See, e.g., *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 885 (9th Cir. 2012) (“Implicit in such a sweeping promise is, at least arguably, a guarantee that the patent-holder will not take steps to keep would-be users from using the patented material, such as seeking an injunction, but will instead proffer licenses consistent with the commitment made.”); *Apple, Inc. v. Motorola, Inc.*, No. 1:11-cv-08540, 2012 U.S. Dist. LEXIS 89960, at *45 (N.D. Ill. June 22, 2012) (Posner, J., sitting by designation) (“I don't see how, given FRAND, I would be justified in enjoining Apple from infringing the '898 [patent] unless Apple refuses to pay a royalty that meets the FRAND requirement. By committing to license its patents on FRAND terms, Motorola committed to license the '898 to anyone willing to pay a FRAND royalty and thus implicitly acknowledged that a royalty is adequate compensation for a license to use that patent. How could it do otherwise?”).

⁷ We have no reason to believe that, in this case, a monopolization count under the Sherman Act was appropriate. However, the Commission has reserved for another day the question whether, and under what circumstances, similar conduct might also be challenged as an unfair act or practice, or as monopolization.

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effectively undermines the role of federal courts and the ITC in the adjudication of SEP-related disputes. We respectfully disagree. As alleged in the Complaint, SPX committed to license its SEPs on FRAND terms. In doing so, we have reason to believe SPX voluntarily gave up the right to seek an injunction against a willing licensee. Moreover, the fact that both the federal courts and the ITC have the authority to deny injunctive relief where the SEP holder has broken its FRAND commitment does not mean that this conduct is not itself a violation of Section 5 or within our reach.

We also take issue with Commissioner Ohlhausen's suggestion that the Commission's action "appears to lack regulatory humility." The Commission is first and foremost a law enforcement agency, and this consent decree, like all of our unfair methods of competition enforcement actions, is a fact-specific response to a very real problem that threatens competition and consumer welfare.

Indeed, we view this action as well within our Section 5 authority. The plain language of Section 5, the relevant legislative history, and a long line of Supreme Court cases all affirm that Section 5 extends beyond the Sherman Act.⁸ Moreover, this is not a circumstance where, as Commissioner Ohlhausen contends, there are no discernible limiting principles. SPX's failure to abide by its commitment took place in the standard-setting context. In that setting, long an arena of concern to the Commission, a breach of contract risks substantial consumer injury. The standard setting context, together with the acknowledgment that a FRAND commitment also depends on the presence of a willing licensee, appropriately limit the Commission's enforcement policy and provide guidance to standard-setting participants.

⁸ See, e.g., *F.T.C. v. R.F. Keppel & Bros., Inc.*, 291 U.S. 304, 310-313 (1934); *F.T.C. v. Cement Inst.*, 333 U.S. 683, 693 & n.6 (1948); *F.T.C. v. Sperry & Hutchinson Co.*, 405 U.S. 233, 241-244 (1972).

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For these reasons, we find Commissioner Ohlhausen's analogy of SPX's conduct to a "garden variety breach-of-contract" to be unpersuasive. While not every breach of a FRAND licensing obligation will give rise to Section 5 concerns, when such a breach tends to undermine the standard-setting process and risks harming American consumers, the public interest demands action rather than inaction from the Commission.

**CONCURRING AND DISSENTING STATEMENT OF
COMMISSIONER MAUREEN K. OHLHAUSEN**

I voted against accepting the proposed consent agreement in this matter because I strongly dissent from those portions of the consent that relate to alleged conduct by the respondent involving standard-essential patents, or SEPs.¹ Even if all of the SEP-related allegations in the complaint were proved – including the allegation that the patents at issue are standard-essential – I would not view such conduct as violating Section 5 of the FTC Act.² Simply seeking injunctive relief on a patent subject to a fair, reasonable, and non-discriminatory ("FRAND") license, without

¹ I concur with the consent agreement reached in this matter insofar as it requires the divestiture of certain assets to remedy the Clayton Act Section 7 violation that likely would have resulted from the proposed transaction. I do have strong reservations, however, about the relatively broad fencing-in relief included in the proposed Decision and Order that requires the respondent to cancel the exclusivity provisions in its contracts with various distributors and equipment servicers. See Decision and Order ¶ III. Fencing-in relief that modifies contracts entered into by participants across an industry raises concerns for me about whether such relief goes beyond that which is necessary to protect the viability of the divestiture buyer and thus effectuate the legitimately pursued remedy in this matter.

² See Complaint ¶¶ 11-20, 23. See also Decision and Order ¶ IV; Analysis of Agreement Containing Consent Order to Aid Public Comment § V.B.

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more,³ even if seeking such relief could be construed as a breach of a licensing commitment, should not be deemed either an unfair method of competition or an unfair act or practice under Section 5. The enforcement policy on the seeking of injunctive relief on FRAND-encumbered SEPs that the Commission has announced today suffers from several critical defects.

First, this enforcement policy raises significant issues of jurisdictional and institutional conflict. It is simply not in the public interest to effectively oust other institutions, including the federal courts and the International Trade Commission (“ITC”) from the important and complex area of SEPs through the use of our Section 5 authority. By imposing Section 5 liability on a firm that seeks injunctive relief on its SEPs, the Commission is doing exactly that. The FTC is not, nor should it be, the only institution acting in the SEPs space. Moreover, it is unclear how the seeking of injunctive relief, in either the courts or the ITC, on a patent – even a FRAND-encumbered SEP – would not be considered protected petitioning of the government under the *Noerr-Pennington* doctrine.⁴ In fact, a court recently dismissed Sherman Act and state unfair competition claims grounded on the seeking of injunctive relief in the courts and the ITC on FRAND-encumbered SEPs, holding that such conduct was protected by *Noerr*.⁵

Second, this enforcement policy appears to lack regulatory humility. The policy implies that our judgment on the availability of injunctive relief on FRAND-encumbered SEPs is superior to

³ See, e.g., *In re Rambus, Inc.*, Dkt. No. 9302 (FTC Aug. 2, 2006) (Commission opinion) (finding deception that undermined the standard-setting process), *rev’d*, *Rambus Inc. v. FTC*, 522 F.3d 456 (D.C. Cir. 2008); *In re Union Oil Co. of Cal.*, 138 F.T.C. 1 (2003) (Commission opinion) (same); *In re Dell Computer Corp.*, 121 F.T.C. 616 (1996) (consent order) (alleging same).

⁴ See *Eastern R.R. Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965); *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) (applying *Noerr-Pennington* doctrine to petitioning of judicial branch).

⁵ See *Apple, Inc. v. Motorola Mobility, Inc.*, No. 3:11-cv-00178-BBC, 2012 WL 3289835, at *12-14 (W.D. Wis. Aug. 10, 2012) (dismissing Apple’s Sherman Act and state unfair competition claims and holding that Motorola’s filing of litigation in the federal courts and ITC on its FRAND-encumbered SEPs was immune under *Noerr*).

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that of these other institutions. I agree that the FTC is well positioned to offer its views and to advocate on the important issue of patent hold-up using its policy tools. For that reason, I supported the Commission's June 2012 filing with the ITC.⁶ However, as the Commission testified to Congress shortly after filing its statement with the ITC, "Federal district courts have the tools to address this issue [hold-up], by balancing equitable factors or awarding money damages, and the FTC believes that the ITC likewise has the authority under its public interest obligations to address this concern and limit the potential for hold-up."⁷ I see no reason why this unanimous statement no longer holds.⁸

Third, to the extent that the SEP allegations in the complaint aspire to the consent agreement reached in the Commission's *N-Data*⁹ matter, I would submit that that consent is an ill-advised guidepost for this agency to use in its enforcement of Section 5 for several reasons. Most importantly, the *N-Data* consent fails to identify meaningful limiting principles that would govern the Commission's use of its Section 5 authority.¹⁰ As former

⁶ Third Party United States Federal Trade Commission's Statement on the Public Interest, *In re Certain Wireless Communications Devices, Portable Music and Data Processing Devices, Computers and Components Thereof*, Inv. No. 337-TA-745 (Int'l Trade Comm'n June 6, 2012), available at <http://www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf>.

⁷ *Oversight of the Impact on Competition of Exclusion Orders to Enforce Standard-Essential Patents: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. 1-2 (2012) (statement of the Federal Trade Commission), available at <http://www.ftc.gov/os/testimony/120711standardpatents.pdf>.

⁸ The cases cited in the Commission's statement for the proposition that there is an "increasing judicial recognition" on the tension between FRAND commitments and injunctive relief, to the extent that they reveal anything, show that the courts are not freely issuing injunctions against willing licensees of FRAND-encumbered SEPs. See Statement of the Commission, at 2 n.6. Thus, far from supporting the position that the FTC should block access to other institutions, these cases clearly demonstrate that the courts are well equipped to address issues involving injunctions on FRAND-encumbered SEPs.

⁹ *In re Negotiated Data Solutions LLC*, FTC File No. 051-0094, Decision and Order (Jan. 23, 2008), available at <http://www.ftc.gov/os/caselist/0510094/080923ndsdo.pdf>.

¹⁰ See, e.g., *E.I. du Pont de Nemours & Co. v. FTC*, 729 F.2d 128, 139 (2d Cir. 1984) ("*Ethyl*"); ("[T]he Commission owes a duty to define the conditions under which conduct . . . would be unfair so that business will have an inkling

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Chairman Majoras explained in her dissent, the *N-Data* consent was a material departure from the prior line of standard-setting organization (“SSO”) cases brought by the Commission, which were grounded in deceptive conduct in the standard-setting context that led to, or was likely to lead to, anticompetitive effects.¹¹ Then-Commissioner Kovacic also dissented, objecting to, among other things, the majority’s assumption that a Section 5 action would have no spillover effects in terms of follow-on private litigation.¹²

The SEP allegations and consent in the instant matter suffer from many of the same deficiencies as the *N-Data* consent. I simply do not see any meaningful limiting principles in the enforcement policy laid out in these cases. The Commission statement emphasizes the context here (*i.e.* standard setting); however, it is not clear why the type of conduct that is targeted here (*i.e.* a breach of an allegedly implied contract term with no allegation of deception) would not be targeted by the Commission in any other context where the Commission believes consumer harm may result. If the Commission continues on the path begun in *N-Data* and extended here, we will be policing garden variety breach-of-contract and other business disputes between private parties. Mere breaches of FRAND commitments, including potentially the seeking of injunctions if proscribed by SSO

as to what they can lawfully do rather than be left in a state of complete unpredictability.”); *FTC v. Abbott Labs.*, 853 F. Supp. 526, 535-36 (D.D.C. 1994) (“The Second Circuit stated emphatically that some workable standard must exist for what is or is not to be considered an unfair method of competition under § 5. Otherwise, companies subject to FTC prosecution would be the victims of ‘uncertain guesswork rather than workable rules of law.’”) (quoting *Ethyl*, 729 F.2d at 139); ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS 661 (7th ed. 2012) (“FTC decisions have been overturned despite proof of anticompetitive effect where the courts have concluded that the agency’s legal standard did not draw a sound distinction between conduct that should be proscribed and conduct that should not.”).

¹¹ See *In re Negotiated Data Solutions LLC*, FTC File No. 051-0094, Dissenting Statement of Chairman Majoras, at 1-2 (Jan. 23, 2008), available at <http://www.ftc.gov/os/caselist/0510094/080122majoras.pdf>.

¹² See *id.*, Dissenting Statement of Commissioner William E. Kovacic, at 1-2, available at <http://www.ftc.gov/os/caselist/0510094/080122kovacic.pdf>.

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rules,¹³ are better addressed by the relevant SSOs or by the affected parties via contract and/or patent claims resolved by the courts or through arbitration.

It is important that government strive for transparency and predictability. Before invoking Section 5 to address business conduct not already covered by the antitrust laws (other than perhaps invitations to collude), the Commission should fully articulate its views about what constitutes an unfair method of competition, including the general parameters of unfair conduct and where Section 5 overlaps and does not overlap with the antitrust laws, and how the Commission will exercise its enforcement discretion under Section 5. Otherwise, the Commission runs a serious risk of failure in the courts¹⁴ and a possible hostile legislative reaction,¹⁵ both of which have accompanied previous FTC attempts to use Section 5 more expansively.

¹³ The instant matter also raises concerns about the Commission imposing requirements on the respondent that go beyond those it agreed to as part of the SSO at issue here, which does not appear to ban the seeking of injunctions on SEPs included in its standards. See SAE International, Technical Standards Board Governance Policy § 1.14 (Nov. 2008), available at <http://www.sae.org/standardsdev/tsb/tsbpolicy.pdf>. Even more troublesome, it is an open question whether the patents at issue are even standard-essential. See, e.g., Complaint ¶ 16 (“After the adoption of SAE J-2788, SPX Corporation sued certain competitors, including Bosch, for infringing patents that may be essential to the practice of SAE J-2788.”).

¹⁴ See *Ethyl*, 729 F.2d 128; *Official Airline Guides, Inc. v. FTC*, 630 F.2d 920 (2d Cir. 1980); *Boise Cascade Corp. v. FTC*, 637 F.2d 573 (9th Cir. 1980); *Abbott Labs.*, 853 F. Supp. 526.

¹⁵ See William E. Kovacic & Marc Winerman, *Competition Policy and the Application of Section 5 of the Federal Trade Commission Act*, 76 ANTITRUST L.J. 929, 943 (2010) (“In the 1950s and the 1970s, Commission efforts to use Section 5 litigation to reach beyond prevailing interpretations of Sections 1 and 2 of the Sherman Act elicited strong political backlash from the Congress.”).

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This consent does nothing either to legitimize the creative, yet questionable application of Section 5 to these types of cases or to provide guidance to standard-setting participants or the business community at large as to what does and does not constitute a Section 5 violation. Rather, it raises more questions about what limits the majority of the Commission would place on its expansive use of Section 5 authority.

Complaint

IN THE MATTER OF

CBR SYSTEMS, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5(A) OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4400; File No. 112 3120
Complaint, April 29, 2013 – Decision, April 29, 2013

The complaint alleges that Cbr Systems, Inc. (“Cbr”), a provider of umbilical cord blood and umbilical cord tissue banking services, failed to protect the security of its customers’ personal information. According to the complaint, in December 2010, a Cbr laptop, external hard drive, USB drive, and several unencrypted backup tapes were stolen from a Cbr employee’s personal vehicle, exposing the Social Security numbers and credit and debit card numbers of nearly 300,000 consumers. The complaint alleges that Cbr’s privacy policy misrepresented its efforts to protect the security of its customers’ personal information, making its privacy policy claims deceptive under the Federal Trade Commission Act. The consent order requires Cbr to establish and maintain a comprehensive information security program that is designed to protect the security, confidentiality, and integrity of personal information from or about consumers. The order further prohibits Cbr from engaging in future practices similar to those alleged in the complaint.

Participants

For the *Commission*: *Ryan Mehm and Laura Riposo VanDruff.*

For the *Respondent*: *Thomas F. Chaffin, Michael Sibarium, and Joseph R. Tiffany, Pillsbury Winthrop Shaw Pittman LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Cbr Systems, Inc. has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Cbr Systems, Inc. (“Cbr”) is a California corporation with its principal office or place of business at 1200 Bayhill Drive, Suite 301, San Bruno, California 94066.