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NORTHERN DISTRICT OF CALIFORNIA

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

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11 SECURITIES AND EXCHANGE COMMISSION,
12 Plaintiff,
13 vs.
14 GE INVISION, INC. (formerly known as INVISION
TECHNOLOGIES, INC.),
15 Defendant.
16

C Case No. 05 0660
COMPLAINT

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

20 SUMMARY OF THE ACTION

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

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

3 FACTS

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

11 A. China

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

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

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

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

10 **B. Philippines**

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

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

23 15. In December 2001, the Senior Executive agreed to pay the Filipino sales agent a
24 commission in the amount of approximately \$108,000 in connection with the November 2001 sale.
25 Based on information provided by the Regional Sales Manager and Senior Executive, InVision's
26 finance department subsequently authorized the payment, which was completed in July 2002. At the
27 time of the payment, based on the information provided to the Regional Sales Manager and the
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1 Senior Executive, InVision was aware of a high probability that the sales agent intended to use part of
2 the commission to make gifts or pay cash to influence Filipino government officials to purchase
3 InVision products. InVision improperly recorded the payment in its books as a sales commission.
4 The Filipino agent did not complete any additional sales on behalf of InVision.

5 **C. Thailand**

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

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

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

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

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

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

16 **FIRST CLAIM**

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

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

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

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

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

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

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

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

THIRD CLAIM

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

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

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment
3 ordering Defendant to pay a \$500,000 civil penalty pursuant to Section 21(d)(3) and 32(c) of the
4 Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78ff(c)], and granting such other relief as the Court deems
5 appropriate.
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7 Dated: February 11, 2005.

8 Respectfully submitted:

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11 By: 

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

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SECURITIES AND EXCHANGE COMMISSION