

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:

Intevac, Inc.  
3560 Bassett Street  
Santa Clara, CA 95054

Respondent

ORDER RELATING TO  
INTEVAC, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Intevac, Inc. of Santa Clara, California (“Intevac”), of its intention to initiate an administrative proceeding against Intevac pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),<sup>2</sup> through the issuance of a Proposed Charging Letter to Intevac that alleges that Intevac committed five violations of the Regulations. Specifically, the charges are:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violations occurred between 2007 and 2010. The Regulations governing the violations at issue are found in the 2007-2010 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2013 Regulations set forth the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 & Supp. IV 2010).

**Charge 1**                    **15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Releasing National Security-Controlled Technology to a Russian National in the United States Without the Required License**

Between on or about January 17, 2007, and on or about May 25, 2007, Intevac released technology subject to the Regulations to a Russian national located in the United States without the required license from the Department of Commerce. Specifically, Intevac released drawings, blueprints for parts, and identification numbers of parts, development and production technology subject to the Regulations, for a product used in hard disk drive manufacturing to a Russian national employee at its Santa Clara, California facility without the Department of Commerce license required by Section 742.4 of the Regulations. The technology was classified under Export Control Classification Number (“ECCN”) 3E001 and controlled for national security reasons. Intevac released the technology, which was located on a server at its Santa Clara, California facility, by providing the Russian national employee with a login identification code and password that enabled him to view, print, and create attachments. Pursuant to Section 734.2(b) of the Regulations, the release of technology subject to the Regulations to a foreign national in the United States is a deemed export to the foreign national’s home country or home countries. In so doing, Intevac committed one violation of Section 764.2(a) of the Regulations.

**Charges 2-4**                    **15 C.F.R. § 764.2(e) – Acting with Knowledge**

On three occasions, or about June 25, 2007, on or about July 12, 2007, and on or about August 27, 2007, Intevac stored technology subject to the Regulations with knowledge that violations of the Regulations had occurred, were about to occur, or were intended to occur in connection with the technology. Specifically, Intevac stored drawings, blueprints for parts, and identification numbers of parts, development and production technology subject to the Regulations, for a product used in hard disk drive manufacturing on its server located at its Santa Clara, California facility. The technology was classified under ECCN 3E001 and controlled for national security reasons. Intevac released the technology to a Russian national employee working at the facility without the Department of Commerce licenses required by Section 742.4 of the Regulations. Intevac provided the employee with a login identification code and password that enabled him to view, print, and create attachments. Pursuant to Section 734.2(b) of the Regulations, the release of technology subject to the Regulations to a foreign national in the United States is a deemed export to the foreign national’s home country or home countries. The three releases occurred while Intevac’s June 5, 2007 deemed export license application for the release of the same technology to the Russian national employee was pending with the Department of Commerce. The Department of Commerce granted a deemed export license to Intevac on September 20, 2007. In so doing, Intevac committed three violations of Section 764.2(e) of the Regulations.

**Charge 5**

**15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Exporting National Security-Controlled Technology to China Without the Required License**

On one occasion on or about May 21, 2010, Intevac exported technology subject to the Regulations to China without the required license from the Department of Commerce. Specifically, Intevac exported drawings, blueprints for parts, and identification numbers of parts, development and production technology under the Regulations, for a product used in hard disk drive manufacturing to its Chinese subsidiary, Intevac Shenzhen Company Ltd., located in Shenzhen, China. The technology was classified under ECCN 3E001, controlled for national security reasons, and required an export license from the Department of Commerce pursuant to Section 742.4 of the Regulations. The unlicensed export took the form of a transmission that occurred when a Chinese national employee working at the Chinese subsidiary used a login identification code and password provided by Intevac to access a server storing the technology that was located at Intevac's Santa Clara, California headquarters and to open a file attachment containing the technology. In so doing, Intevac committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Intevac have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, Intevac shall be assessed a civil penalty in the amount of \$115,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Intevac will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above, is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Intevac. Accordingly, if Intevac should fail to pay the civil penalty in a full and timely manner, the undersigned may issue an order denying all of Intevac's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

FOURTH, Intevac shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Intevac's testimonial obligations in any proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, that the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

A handwritten signature in black ink, appearing to read 'D. W. Mills', is written over a horizontal line.

David W. Mills  
Assistant Secretary of Commerce  
for Export Enforcement

Issued this 19<sup>th</sup> day of February, 2014.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:

Intevac, Inc.  
3560 Bassett Street  
Santa Clara, CA 95054

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Intevac, Inc. of Santa Clara, California ("Intevac"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (the "Regulations"),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (the "Act").<sup>2</sup>

WHEREAS, Intevac filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

WHEREAS, BIS has notified Intevac of its intentions to initiate an administrative proceeding against Intevac pursuant to the Act and the Regulations;

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violations occurred between 2007 and 2010. The Regulations governing the violations at issue are found in the 2007-2010 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2013 Regulations set forth the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 & Supp. IV 2010).

WHEREAS, BIS has issued a Proposed Charging Letter to Intevac that alleges that Intevac committed five violations of the Regulations, specifically:

**Charge 1                    15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Releasing National Security-Controlled Technology to a Russian National in the United States Without the Required License**

Between on or about January 17, 2007, and on or about May 25, 2007, Intevac released technology subject to the Regulations to a Russian national located in the United States without the required license from the Department of Commerce. Specifically, Intevac released drawings, blueprints for parts, and identification numbers of parts, development and production technology subject to the Regulations, for a product used in hard disk drive manufacturing to a Russian national employee at its Santa Clara, California facility without the Department of Commerce license required by Section 742.4 of the Regulations. The technology was classified under Export Control Classification Number (“ECCN”) 3E001 and controlled for national security reasons. Intevac released the technology, which was located on a server at its Santa Clara, California facility, by providing the Russian national employee with a login identification code and password that enabled him to view, print, and create attachments. Pursuant to Section 734.2(b) of the Regulations, the release of technology subject to the Regulations to a foreign national in the United States is a deemed export to the foreign national’s home country or home countries. In so doing, Intevac committed one violation of Section 764.2(a) of the Regulations.

**Charges 2-4    15 C.F.R. § 764.2(e) – Acting with Knowledge**

On three occasions, or about June 25, 2007, on or about July 12, 2007, and on or about August 27, 2007, Intevac stored technology subject to the Regulations with knowledge that violations of the Regulations had occurred, were about to occur, or were intended to occur in connection with the technology. Specifically, Intevac stored drawings, blueprints for parts, and identification numbers of parts, development and production technology subject to the Regulations, for a product used in hard disk drive manufacturing on its server located at its Santa Clara, California facility. The technology was classified under ECCN 3E001 and controlled for national security reasons. Intevac released the technology to a Russian national employee working at the facility without the Department of Commerce licenses required by Section 742.4 of the Regulations. Intevac provided the employee with a login identification code and password that enabled him to view, print, and create attachments. Pursuant to Section 734.2(b) of the Regulations, the release of technology subject to the Regulations to a foreign national in the United States is a deemed export to the foreign national’s home country or home countries. The three releases occurred while Intevac’s June 5, 2007 deemed export license application for the release of the same technology to the Russian national employee was pending with the Department of Commerce. The Department of

Commerce granted a deemed export license to Intevac on September 20, 2007. In so doing, Intevac committed three violations of Section 764.2(e) of the Regulations.

**Charge 5                    15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by  
Exporting National Security-Controlled Technology to China  
Without the Required License**

On one occasion on or about May 21, 2010, Intevac exported technology subject to the Regulations to China without the required license from the Department of Commerce. Specifically, Intevac exported drawings, blueprints for parts, and identification numbers of parts, development and production technology under the Regulations, for a product used in hard disk drive manufacturing to its Chinese subsidiary, Intevac Shenzhen Company Ltd., located in Shenzhen, China. The technology was classified under ECCN 3E001, controlled for national security reasons, and required an export license from the Department of Commerce pursuant to Section 742.4 of the Regulations. The unlicensed export took the form of a transmission that occurred when a Chinese national employee working at the Chinese subsidiary used a login identification code and password provided by Intevac to access a server storing the technology that was located at Intevac's Santa Clara, California headquarters and to open a file attachment containing the technology. In so doing, Intevac committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, Intevac has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, Intevac fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Intevac enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, Intevac states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Intevac neither admits nor denies the allegations contained in the Proposed Charging Letter; and





WHEREAS, Intevac agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Intevac, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanction shall be imposed against Intevac in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:
  - a. Intevac shall be assessed a civil penalty in the amount of \$115,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.
  - b. The full and timely payment of the civil penalty agreed to in Paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Intevac. Failure to make full and timely payment of the civil penalty may result in the denial of all of Intevac's export privileges under the Regulations for one year from the date of the failure to make such payment.
3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, Intevac hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in



any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Intevac also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until Intevac pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. Intevac shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Intevac's testimonial obligations in any proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against Intevac in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties

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shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

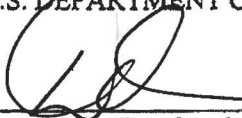
8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.


A handwritten signature or set of initials, possibly 'JQ', located in the bottom right corner of the page.

10. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND  
SECURITY  
U.S. DEPARTMENT OF COMMERCE

  
\_\_\_\_\_  
Douglas K. Hassebrock  
Director of Export Enforcement

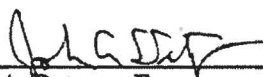
INTEVAC, INC.

  
\_\_\_\_\_  
Jeffrey Andreson  
Chief Financial Officer and Executive  
Vice-President

Date: 2/11/14

Date: 1/31/14

Reviewed and approved by:

  
\_\_\_\_\_  
John A. Detzner, Esq.  
Neville Peterson LLP  
Counsel for Intevac, Inc.

Date: 1/31/14



PROPOSED CHARGING LETTER

REGISTERED MAIL- RETURN RECEIPT REQUESTED

Intevac, Inc.  
3560 Bassett Street  
Santa Clara, CA 95054

Attention: *Jeffrey Andreson*  
*Chief Financial Officer and Executive Vice-President*

Dear Mr. Andreson:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Intevac, Inc., of Santa Clara, California (“Intevac”), has committed five violations of the Export Administration Regulations (the “Regulations”),<sup>1</sup> which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).<sup>2</sup> Specifically, BIS alleges that Intevac committed the following violations:

**Charge 1                    15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Releasing National Security-Controlled Technology to a Russian National in the United States Without the Required License**

Between on or about January 17, 2007, and on or about May 25, 2007, Intevac released technology subject to the Regulations to a Russian national located in the United States without the required license from the Department of Commerce. Specifically, Intevac released drawings, blueprints for parts, and identification numbers of parts, development and production technology subject to the Regulations, for a product used in hard disk drive manufacturing to a Russian national employee at its Santa Clara, California facility without the Department of Commerce license required by Section 742.4 of the Regulations. The technology was classified under

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The violations alleged occurred between 2007 and 2010. The Regulations governing the violations at issue are found in the 2007-2010 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2007-2010). The 2013 Regulations govern the procedural aspects of this case.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49,107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 and Supp. IV (2010)).

Export Control Classification Number (“ECCN”) 3E001 and controlled for national security reasons. Intevac released the technology, which was located on a server at its Santa Clara, California facility, by providing the Russian national employee with a login identification code and password that enabled him to view, print, and create attachments. Pursuant to Section 734.2(b) of the Regulations, the release of technology subject to the Regulations to a foreign national in the United States is a deemed export to the foreign national’s home country or home countries. In so doing, Intevac committed one violation of Section 764.2(a) of the Regulations.

**Charges 2-4 15 C.F.R. § 764.2(e) – Acting with Knowledge**

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**Charge 5 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Exporting National Security-Controlled Technology to China Without the Required License**

On one occasion on or about May 21, 2010, Intevac exported technology subject to the Regulations to China without the required license from the Department of Commerce. Specifically, Intevac exported drawings, blueprints for parts, and identification numbers of parts, development and production technology under the Regulations, for a product used in hard disk drive manufacturing to its Chinese subsidiary, Intevac Shenzhen Company Ltd., located in Shenzhen, China. The technology was classified under ECCN 3E001, controlled for national security reasons, and required an export license from the Department of Commerce pursuant to Section 742.4 of the Regulations. The unlicensed export took the form of a transmission that occurred when a Chinese national employee working at the Chinese subsidiary used a login identification code and password provided by Intevac to access a server storing the technology that was located at Intevac’s Santa Clara, California headquarters and to open a file attachment containing the technology. In so doing, Intevac committed one violation of Section 764.2(a) of the Regulations.

\* \* \* \* \*

Accordingly, Intevac is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, or twice the value of the transaction that is the basis of the violation,<sup>3</sup>
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Intevac fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Intevac defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Intevac. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Intevac is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Intevac is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Intevac have a proposal to settle this case, Intevac should transmit it to the attorney representing BIS named below.

Intevac is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Intevac may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Intevac's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center

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<sup>3</sup> *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Intevac, Inc.  
Proposed Charging Letter  
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40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Intevac's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Parvin Huda  
Room H-3327  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Parvin Huda is the attorney representing BIS in this case; any communications that Intevac may wish to have concerning this matter should occur through her. Ms. Huda may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock  
Director  
Office of Export Enforcement