
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON D.C.

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,
a corporation.

Docket No. 9305

STIPULATED JOINT MOTION AND [PROPOSED] ORDER RE *IN CAMERA*
TREATMENT OF CERTAIN EXHIBITS

In reviewing the trial transcripts, Complaint Counsel and Respondent Union Oil Company of California have identified certain exhibits that, because they contained material that was the subject of prior *in camera* orders, were treated as *in camera* exhibits at trial through discussion with the Court. However, these documents are not specifically identified in any written *in camera* Order. The parties file this joint motion to clarify the status of these exhibits on the record so that the parties may comply with Rule 3.46 of the FTC Rules of Practice in filing their post-trial briefs. In addition, the parties have noted that one exhibit, JX 3, is the parties' Joint Stipulations of Law and Fact that was originally filed as a confidential document but, when offered in court, no statement was made about its *in camera* status. Based on a review of the record and the previous *in camera* Orders of this Court, the parties agree as follows:

1. The following are *in camera* versions of expert reports that have received and should

continue to receive *in camera* treatment:

Exhibit Number	Description	Public Version
CX 1720	Shapiro Expert Report	CX 1720A
CX 1797	Sarna Rebuttal Report	CX 1797A
CX 1798	Eskew Rebuttal Report	CX 1798A
CX 1799	Shapiro Rebuttal Report	CX 1799A
RX 1154	Sarna Expert Report	RX 1154A
RX 1162	Teece Expert Report	RX 1162A
RX 1164	Griffin Expert Report	RX 1164A
RX 1165	Stellman Expert Report	RX 1165A

These *in camera* versions of the reports were prepared after discussion with the Court at trial. (See Tr. 6325-6327, attached hereto at Tab A). These versions of the reports contain information including, but not limited to, licensing agreements and batch data that is subject to the Court's prior *in camera* rulings. The public versions of the reports (the redacted versions) have been admitted under the same exhibit number as its corresponding *in camera* report but with an "A" designator.

2. CX 436 is a document that was given similar treatment as the expert reports. (See Tr. 3737-3739, *in camera*). *In camera* information was identified in the document; the exhibit was therefore redacted, the public version admitted with an "A" designator and the *in camera*

version marked with an *in camera* label and provided to the court reporter. The parties agree and represent that CX 436 has received and should continue to receive *in camera* treatment to protect information that is confidential to third-party licensees and is subject to previous *in camera* rulings of this Court.

3. JX 3 is the parties' Joint Stipulations of Law and Fact that was filed as a confidential document with the Court on October 12, 2004. On reviewing the transcripts, the parties note that JX 3 was offered into evidence in Court on October 20, 2004 with no statement about its confidential status or request for *in camera* treatment. (See Tr. 222-223, attached hereto at Tab B). The parties agree and represent that the document should receive *in camera* treatment as it includes information that is highly confidential to third-party licensees and is the subject of previous *in camera* rulings from this Court. The parties have prepared a redacted version, attached hereto at Tab C, which they jointly offer as JX 3A. The proffered *in camera* version will be marked with an *in camera* label and provided to the court reporter.

///

///

///

4. Appropriate versions of all documents will be provided to the court reporter for appropriate handling.

Accordingly, the parties jointly and respectfully request that the documents listed herein be accorded in camera treatment.

Respectfully submitted,

By: John Roberti
Chong S. Park
John Roberti
Lisa Fialco
Lore Unt

By: Diane Simerson/AR
Martin R. Lueck
David W. Beehler
Sara A. Poulos
Diane L. Simerson
Bethany D. Krueger

Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Phone: (202) 326-2372
Fax: (202) 326-3496

Dated: March 7, 2005

ROBINS, KAPLAN, MILLER & CIRESI
L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015

Phone: 612-349-8500
Fax: 612-339-4181

03/07/05 15:30 FAX 912023262071

MERGERS TWO

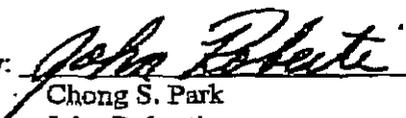
005

4. Appropriate versions of all documents will be provided to the court reporter for appropriate handling.

Accordingly, the parties jointly and respectfully request that the documents listed herein be accorded in camera treatment.

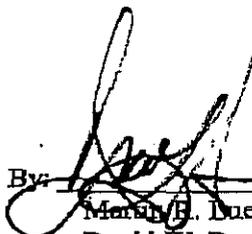
Respectfully submitted,

By:



Chong S. Park
John Roberti
Lisa Fialco
Lora Unt

By:



Martin B. Dueck
David W. Bechler
Sara A. Poulos
Diane L. Simerson
Bethany D. Krueger

Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

Phone: (202) 326-2372
Fax: (202) 326-3496

Dated: March 7, 2005

ROBINS, KAPLAN, MILLER & CIRESI
L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015

Phone: 612-349-8500
Fax: 612-339-4181

20122776.1

4

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

UNION OIL COMPANY OF CALIFORNIA
a corporation.

Docket No. 9305

[PROPOSED] ORDER

For the reasons stated in the stipulated Joint Motion re *In Camera* Treatment of Certain Exhibits, based on the parties joint representation, the Court's prior *in camera* rulings, and for good cause shown:

I.

IT IS HEREBY ORDERED that the following exhibits shall be granted in camera treatment until December 31, 2014 as follows:

Exhibit Number	Description
CX 436	Unocal Document titled "Current Status of RFG"
CX 1720	Shapiro Expert Report
CX 1797	Sarna Rebuttal Report
CX 1798	Eskew Rebuttal Report
CX 1799	Shapiro Rebuttal Report
RX 1154	Sarna Expert Report
RX 1162	Teece Expert Report
RX 1164	Griffin Expert Report
RX 1165	Stellman Expert Report
JX 3	Joint Stipulation of Law and Fact

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: _____, 2005

CERTIFICATE OF SERVICE

I, Guru Raj, hereby certify that on March 7, 2004, I caused copies of the "Stipulated Joint Motion and [Proposed] Order re *In Camera* Treatment of Certain Exhibits" to be served upon the following:

VIA HAND DELIVERY:

The Honorable D. Michael Chappell
Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA FEDERAL EXPRESS:

David W. Beehler, Esq.
Robins, Kaplan, Miller & Ciresi LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

Joseph Kattan, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5306



Guru Raj

TAB A

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE CHAPPELL: Are we ready?

MR. PARK: Good morning, Your Honor.

Thank you.

JUDGE CHAPPELL: Good morning.

MR. PARK: One preliminary matter this morning,
Your Honor.

Counsel for respondent and complaint counsel
have conferred about the procedures with respect to
ensuring that the exhibits that were introduced
properly reflect Your Honor's previous in camera
rulings.

And with the court's permission, what we would
suggest is that at this time that we withdraw CX-1797,
RX-1154, RX-1165, with the understanding that a version
reflecting this court's prior in camera rulings be
submitted at a later date once that is worked out and
the documents are properly marked to reflect this
court's earlier rulings, Your Honor.

JUDGE CHAPPELL: You're going to substitute with
the same exhibit numbers?

MR. PARK: That's correct, Your Honor.

JUDGE CHAPPELL: Here's the problem we have. A
situation, which many might consider somewhat

1 reasonable, is that pretty much everything that's ever
2 discussed or handed to the court reporter becomes part
3 of the file or record in this case. Because of that, I
4 have concern for the interests of third parties who have
5 this in camera information.

6 So what I'm going to instruct you to do -- has
7 any copy been given to the court reporter yet?

8 MR. PARK: I'm not aware of any, but let me
9 check with my colleague.

10 JUDGE CHAPPELL: Let's go off the record.

11 (Discussion off the record.)

12 JUDGE CHAPPELL: Okay. I'm going to instruct
13 the parties, with cooperation of the court reporter, to
14 mark those parts of those exhibits that were referenced
15 as in camera so they can be properly marked and
16 identified. Any copies that have been made of those
17 exhibits must be properly marked and in camera portions
18 identified and/or redacted if necessary.

19 Any questions on that?

20 I need a no or a yes on the record.

21 MR. ROBERTI: No, Your Honor.

22 MS. POULOS: No, Your Honor.

23 JUDGE CHAPPELL: Mr. Roberti?

24 MR. ROBERTI: May I make a representation,
25 Your Honor, that during the time that Mr. Sarna's report

1 was being discussed yesterday, on complaint counsel's
2 side of the room, all the folks in the room were
3 complaint counsel, with the exception of one individual
4 who's a lawyer, William Frick of the Akin Gump law firm,
5 whose client's information was the information being
6 discussed.

7 JUDGE CHAPPELL: We'll need his name for the
8 record.

9 MR. ROBERTI: Yes. It's William Frick,
10 F-R-I-C-K.

11 MS. POULOS: And Your Honor, on Unocal's side of
12 the room, during the discussion of Mr. Sarna's report
13 yesterday, everyone was covered under the protective
14 order.

15 JUDGE CHAPPELL: And I can state for the record
16 there was only the lone individual sitting back to the
17 left, and that's the individual who has been identified
18 as that attorney.

19 MR. ROBERTI: Yes, sir.

20 JUDGE CHAPPELL: Are we ready to go with the
21 witness?

22 MR. PARK: Thank you, Your Honor.

23 JUDGE CHAPPELL: Sir, I remind you you're still
24 under oath.

25

TAB B

1 So I have a stickered JX-4 which matches the
2 original that we gave the court reporter just a minute
3 ago.

4 JUDGE CHAPPELL: So you've substituted this one
5 for the record and it's identical except it's marked
6 better.

7 MR. MARTIN: That's right.

8 JUDGE CHAPPELL: Okay. Thank you.

9 Anything further?

10 MR. MARTIN: Well, I am prepared also,
11 Your Honor, if Your Honor wishes, to do the same thing
12 with JX-3, and that is our joint stipulation of law and
13 fact. It has in fact already been filed with the
14 clerk's office, but I understood that Your Honor wanted
15 a record copy with the JX number, and that's JX-3, and
16 we had some concern yesterday about making sure that
17 since we've got 4 we had 1, 2 and 3, so I thought I
18 could take care of that now as well.

19 JUDGE CHAPPELL: You need to make sure the
20 court reporter has the one that's marked well.

21 MR. MARTIN: I've got that right here.

22 JUDGE CHAPPELL: That will be fine.

23 Anything else?

24 MR. MARTIN: May I approach?

25 JUDGE CHAPPELL: Yes. Go ahead.

1 Has JX-3 been offered? Was it offered last
2 week? I know it was filed with the secretary and served
3 on my office prior to the trial, but has it been
4 offered?

5 Well, let's just take --

6 MR. MARTIN: We hadn't offered it yesterday. I
7 think both parties have agreed that it should be
8 offered, and since the court had expressed a concern
9 about 1, 2 and 3 we thought we should take care of it
10 sooner rather than later.

11 JUDGE CHAPPELL: I have JX-3 being offered as a
12 joint stipulation of fact and law.

13 Complaint counsel, did you sign this?

14 MR. MARTIN: Yes. Not me personally, but our
15 office has signed it, yes.

16 JUDGE CHAPPELL: Okay. Did someone for
17 respondent sign this?

18 MS. POULOS: Yes, Your Honor.

19 JUDGE CHAPPELL: Okay. JX-3 is admitted.

20 (JX Exhibit Number 3 was admitted into
21 evidence.)

22 JUDGE CHAPPELL: Anything further?

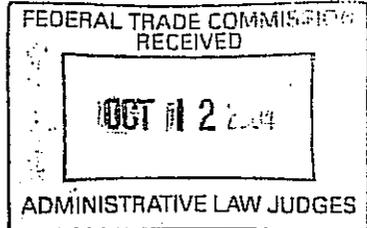
23 MR. MARTIN: No, Your Honor.

24 Thank you.

25 MS. POULOS: Thank you.

TAB C

PUBLIC



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
UNION OIL COMPANY OF)
CALIFORNIA,)
)
a corporation.)
_____)

CONFIDENTIAL
Docket No. 9305

JOINT STIPULATIONS OF LAW AND FACT

In accordance with the Scheduling Order in this matter, Complaint Counsel and Respondent Union Oil Company of California ("Unocal") stipulate to and jointly request that Your Honor allow the stipulations of law and fact listed below. The parties respectfully submit that allowing these stipulations will result in a more efficient presentation of evidence.

I. STIPULATIONS OF LAW

1. Unocal is, and at all relevant times has been, a corporation as "corporation" is defined by Section 4 of the FTC Act, 15 U.S.C. § 44.

2. At all times relevant herein, Unocal has been, and is now, engaged in commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. The offense of monopolization consists of "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product,

JX 0003 A

business acumen, or historic accident.” *United States v. Grinnell, Corp.*, 384 U.S. 563, 570-71 (1966).

4. The essential elements of an attempt to monopolize are: (1) specific intent to control prices or destroy competition in some part of commerce; (2) predatory or anticompetitive conduct directed to accomplishing the unlawful purpose; and (3) a dangerous probability of success. *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456 (1993).

II. STIPULATIONS OF FACT

1. Union Oil Company of California is a public corporation organized, existing, and doing business under, and by virtue of, the laws of California.

2. Unocal’s office and principal place business is located at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.

3. Since 1985, Union Oil Company of California has done business under the name “Unocal.”

4. Prior to 1997, Unocal owned and operated refineries in California as a vertically integrated producer, refiner, and marketer of petroleum products.

5. The testimony of the following witnesses may be designated and offered at trial in lieu of live testimony, subject to the parties’ objections and counter-designations: Nelson Chan, Reza Mahdavi, Catherine Witherspoon, Mark Boone, Bruce Irion, Robert Millar, Edwin Zimmerman, Kess Alley, Stephen Lipman, William Mallett, Neil Schmale, Michael Thacher, Charles Williamson, Jim Aguila, Don Bea, Kevin Cleary, Steve Hancock, Albert Hochhauser, Victor Ibergs, Dave Jacober, Charles Martinez, Gavin McHugh, Neil Moyer, Ken Riley, Diane Sinclair, Jeff Toman, Jim Uihlein, Steven Welstand, John Wood, Douglas Youngblood, Gary Youngman, Michael Wang, Gina Grey, Jan Sharpless, and John J. Wise.

6. Unocal is the owner, by assignment, of the following patents relating to low emissions, reformulated gasoline: United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000).

7. Unocal's five patents, United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000), all share the identical specification.

8. United States Patent No. 5,288,393 (issued February 22, 1994) is valid.

9. United States Patent No. 5,593,567 (issued January 14, 1997) is valid.

10. United States Patent No. 5,653,866 (issued August 5, 1997) is valid.

11. United States Patent No. 5,837,126 (issued November 17, 1998) is valid.

12. United States Patent No. 6,030,521 (issued February 29, 2000) is valid.

13. Unocal's five patents, United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000), all arise from the same scientific discovery and are related in that they all claim priority based on patent application No. 07/628,488, filed on December 13, 1990.

14. Unocal's five patents, United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000), claim priority to the same invention date.

15. On January 23, 2002, Unocal sued Valero Energy Company in the Central District of California for willful infringement of both the '393 patent and the '126 patent. In its complaint, Unocal seeks damages at the rate of 5.75 cents per gallon for all infringing gallons, and treble damages for willful infringement.

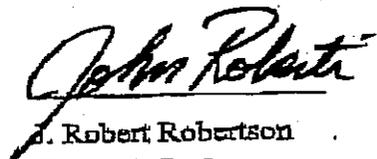
16. /

REDACTED

Respectfully Submitted,

Counsel Supporting the Complaint

Counsel For Respondent



John Robert Robertson
Chong S. Park
John Roberti
Peggy Bayer Femenella
David Conn
Lisa Fialco
Sean Gates
Dean Graybill
John Martin
Lore Unt

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2372
Facsimile (202) 326-3496



Martin R. Lueck
David W. Beehler
Sara A. Poulos
K. Craig Wildfang
David P. Swanson
Diane L. Simerson
Bethany D. Krueger

Robins, Kaplan, Miller & Ciresi LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

Joseph Kattan
J. Christopher Wood
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Dated: October 12, 2004

CERTIFICATE OF SERVICE

I, Terri Martin hereby certify that on October 12, 2004, I caused a copy of Complaint Counsel's and Respondent's Joint Stipulations of Facts and Law to be served upon the below listed persons:

VIA HAND DELIVERY TO:

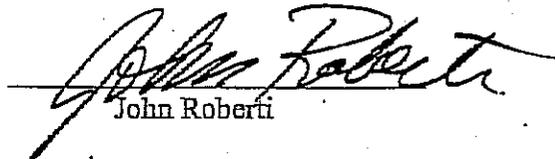
The Honorable D. Michael Chappell
Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA FACSIMILE TO:

David W. Beehler, Esq.
Robins, Kaplan, Miller & Ciresi LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

VIA FACSIMILE TO:

Joseph Kattan, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306


John Roberti