

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

In the matter of)	
)	
UNION OIL COMPANY OF CALIFORNIA,)	Docket No. 9305
)	
a corporation.)	
)	

**DECLARATION OF THOMAS R. EIZEMBER IN SUPPORT OF
EXXONMOBIL’S SECOND MOTION FOR *IN CAMERA* TREATMENT**

I, Thomas R. Eizember, declare as follows:

1. I am the Manager for Global Planning Support in the Planning and Project Execution organization of ExxonMobil Refining and Supply Company, an operating division of Exxon Mobil Corporation (“ExxonMobil”). In that capacity, I have responsibility for business planning support and oversight of all refineries worldwide that are operated by ExxonMobil or its affiliates, including ExxonMobil Oil Corporation’s refinery in Torrance, California. In earlier positions as strategic planning coordinator and senior planning associate at Exxon Corporation (“Exxon”), now ExxonMobil, I was involved in business planning activities relating to Exxon’s refinery in Benicia, California, which was sold to Valero Energy Corporation (“Valero”) in May 2000.
2. ExxonMobil is not a party to the captioned matter.
3. The documents for which ExxonMobil seeks *in camera* treatment, attached as Exhibits A-T hereto, are identified as:

EXHIBIT	CX / RX	PRODUCTION BATES NUMBERS
A	CX 2079	EXMOUNO-0000142 to 178
B	CX 2080	EXMOUNO-0000179 to 216
C	CX 2081	EXMOUNO-0000217 to 257
D	CX 2082	EXMOUNO-0000258 to 265
E	CX 2083	EXMOUNO-0000266 to 273
F	CX 2084	EXMOUNO-0000274 to 282
G	CX 2087	EXMOUNO-0000451 to 458
H	CX 2078	EXMOUNO-0000058 to 099
I	CX 2086	EXMOUNO-0000350 to 392
J	CX 1706	EXMOUNO-0000001 to 057

K	CX 1745 ¹	EXMOUNO-0018435 to 444
L	CX 2098	EXMOUNO-0004867 to 868
M	CX 2088	EXMOUNO-0000938 to 943
N	RX 1073 ²	EXMOUNO-0023945 to 946
O	CX 2095 ³	EXMOUNO-0004460 to 464
P	CX 2092	EXMOUNO-0002779 to 844
Q	RX 1098	EXMOUNO-0024851 to 853
R	CX 2168	EXMOUNOBD-0000001 to 010
S	CX 1783	EXMOUNOBD-0000011 to 015
T	Eizember Deposition Transcript 08/14/03	Page 56, lines 17 through 22. Page 71, line 23 through page 72, line 8. Page 76, line 17 through page 77, line 17. Page 99, line 14 through page 101, line 12. Page 104, line 23 through page 105, line 23.

4. I have reviewed the documents for which ExxonMobil seeks *in camera* treatment. As Manager for Global Planning Support, Planning and Project Execution, I am familiar with the type of information contained in those documents. I am also generally familiar with the confidentiality protection afforded this type of information by ExxonMobil. Based upon my review of these documents, my knowledge of ExxonMobil's business, and my familiarity with the confidentiality protection that ExxonMobil affords information of this type, it is my belief that disclosure of these documents to the public and to competitors of ExxonMobil could cause serious competitive injury to ExxonMobil.

Exhibits

5. Exhibits A-F⁴ are protocols and appendices for the California Air Resources Board ("CARB") approved certification for Exxon's on-line analyzer technology at the Benicia refinery. I understand that Exhibits A-F were produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Other than that production, disclosure to CARB and possibly confidential disclosure to Valero Energy Corporation in connection with Valero's acquisition of the Benicia refinery, these documents have not been disclosed to anyone outside of ExxonMobil, to the best of my knowledge. Exxon devoted substantial business and technological resources to the development of the proposal to CARB and to the testing and validation of on-line certification in support of the proposal.

¹ The portion of CX 1745 for which ExxonMobil seeks in camera protection is EXMOUNO-0018442 to 444, which is the second of two documents included in the exhibit's Bates range.

² RX 1073 is designated on Unocal's exhibit list without the first page of the e-mail chain.

³ The description for CX 2095 should read "Mobil Strategy for MTBE elimination" as it is actually a Mobil document, rather than "Exxon Strategy for MTBE Elimination."

⁴ Exhibit A (CX 2079; EXMOUNO-0000142 to 178); Exhibit B (CX 2080; EXMOUNO-0000179 to 216); Exhibit C (CX 2081; EXMOUNO-0000217 to 257); Exhibit D (CX 2082; EXMOUNO-0000258 to 265); Exhibit E (CX 2083; EXMOUNO-0000266 to 273); and Exhibit F (CX 2084; EXMOUNO-0000274 to 282).

6. Exhibits G-I⁵ reflect three proposals presented confidentially to CARB by Exxon in connection with Exxon's request for on-line certification at its Benicia Refinery. Exhibit G is a draft of the February 5, 1998 proposal and H-I are final versions for the March 24, 1998 and May 15, 1998 proposals, respectively. I understand that Exhibits G-I were produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Other than that production, the disclosure to CARB and possibly confidential disclosure to Valero Energy Corporation in connection with Valero's acquisition of the Benicia refinery, these documents have not been disclosed to anyone outside of ExxonMobil, to the best of my knowledge. Exxon devoted substantial business and technological resources to the development of the proposals to CARB and to the testing and validation of on-line certification in support of those proposals.

7. Exhibit J (RX 1706; EXMOUNO-0000001 to 057) reflects a petition made by Mobil confidentially to CARB to request certification of an on-line analyzer at the Torrance Refinery. Mobil requested that CARB keep the details of the petition confidential when submitting it to CARB. I understand that Exhibit J was produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Other than that production and the disclosure to CARB, this document has not been disclosed to anyone outside of ExxonMobil or its predecessors, to the best of my knowledge. Mobil devoted substantial business and technological resources to the development of the petition to CARB and to the testing and validation of on-line certification in support of the petition.

8. ExxonMobil could suffer serious business injury if the contents of Exhibits A-J regarding on-line certification were to be disclosed publicly. The protocols, proposals and petition discuss the internal production methods used by Exxon and Mobil when blending gasoline to comply with CARB specifications, and refer to methods of using on-line certification and business advantages that usage of on-line certification would confer. Such information could be used by competitors to improve the design of their own production methods with substantially lower commitment of resources than Exxon or Mobil, to the detriment of ExxonMobil's competitive position.

9. Exhibits K-N⁶ are internal business planning documents relating to research, development and/or deployment of on-line certification technology and/or blending to avoid the Unocal patent claims at the Benicia or Torrance refineries. Exhibit K contains two documents, one of which, Bates number EXMOUNO-0018442-444, discusses how Benicia intended to reduce overlap with the numerical properties of the Unocal patent claims through altering certain gasoline parameters and plans for greater precision of its on-line analyzer. Exhibit L contains confidential e-mail communications regarding the operation of and potential modifications to Benicia's on-line analyzer system and the difficulty in blending to meet the CARB specifications while avoiding the claims of the Unocal patents. Exhibit M is a document summarizing Torrance's blending operations in detail, including applications for on-line certification and blending shortcomings and constraints. Finally, Exhibit N contains confidential e-mail

⁵ Exhibit G (CX 2087; EXMOUNO-0000451 to 458); Exhibit H (CX 2078; EXMOUNO-0000058 to 099); Exhibit I (CX 2086; EXMOUNO-0000350 to 392).

⁶ Exhibit K (CX 1745; EXMOUNO-0018435 to 444); Exhibit L (CX 2098; EXMOUNO-0004867 to 868); Exhibit M (CX 2088; EXMOUNO-0000938 to 943); Exhibit N (RX 1073; EXMOUNO-0023945 to 946).

communications concerning Torrance's on-line distillation analyzer, the physical and monetary impacts of the analyzer on Torrance's blending system, overlap with patent claims and potential royalties.

10. All four of these documents were created by Exxon or Mobil personnel for internal use and limited distribution. It is my understanding that Exhibits K-N were produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Apart from that production, these documents have not been disclosed to anyone outside of ExxonMobil, to the best of my knowledge. ExxonMobil's predecessors devoted substantial effort, time and financial resources to the development and usage of on-line analyzer technology and to the study and implementation of methods for blending around the numerical property claims of the Unocal patents. On-line analysis and avoiding the patent claims are critical to ExxonMobil's business and competitive position, and ExxonMobil is currently in the process of seeking to enhance these capabilities. Disclosure of this valuable information to competitors would result in business harm and the likely loss of economic advantages in the marketplace. Because the competitors would know and be able to exploit the level of ExxonMobil's technological development in blending operations, they could benefit from ExxonMobil's research on blend-around strategies and on-line analysis without having to spend the required time or money themselves.

11. Exhibit O (CX 2097; EXMOUNO-0004460 to 464) is Mobil's strategy for MTBE elimination, which describes a 3-5 year fuels and capital investment strategy, assuming elimination of MTBE as an oxygenate in CARB gasoline. Exhibit O contains various assumptions, cases and future refinery configurations to plan for gasoline blending after MTBE elimination. The strategy also contemplates the resulting challenges for blending around the numerical property claims of the Unocal patents. This document was intended exclusively for Mobil personnel for use in blending operations at the Torrance Refinery. I understand that Exhibit O was produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Other than that production, the document has not been distributed to anyone outside of ExxonMobil, to the best of my knowledge. ExxonMobil has devoted substantial business resources to the development of a successful strategy for blending gasoline without MTBE. Because the description of ExxonMobil's potential blending techniques and plans implicitly reveals ExxonMobil's current methods, the strategy reflected in Exhibit O goes to the heart of ExxonMobil's gasoline production effort in California. If this information were disclosed to third parties or competitors of ExxonMobil, they could gain an understanding of ExxonMobil's production methods, costs and limitations, resulting in serious harm to ExxonMobil's business.

12. Exhibit P (CX 2092; EXMOUNO-0002779 to 844) is the Torrance Refinery's investment and operation plan for producing CARB Phase 3 gasoline. It contains sensitive information such as a facility overview, cost estimates and reduction targets, plans for minimizing investment costs, volume and Unocal patent implications of the MTBE phase-out, and planning and base case summaries for blending. ExxonMobil's pricing information and production figures, as well as blending strategies with cost estimates, are also set forth. The material in this document was intended for the internal use of ExxonMobil personnel involved in the Phase 3 / MTBE Phase-out project at Torrance. I understand that Exhibit P was produced to

Unocal with the designation “Confidential” pursuant to the Protective Order in this matter. Other than that production, the document has not been distributed to anyone outside of ExxonMobil, to the best of my knowledge. ExxonMobil has devoted substantial business resources to the development of its strategy for blending gasoline without MTBE, and the pricing and production research that corresponds to such a strategy. Disclosure of this ongoing project could be harmful to ExxonMobil’s economic position by exposing Torrance’s current operating practices and economics. Competitors could exploit any limitations in Torrance’s Phase 3 production or could deploy similar technology to produce Phase 3 gasoline or blend around the patent claims at lower cost without having to spend the same resources to reach those conclusions themselves.

13. Exhibit Q (RX 1098; EXMOUNO-0024851 to 853) contains confidential e-mail communications regarding ExxonMobil’s five year planning basis for the west coast, including the blend-around guidance for the Torrance refinery. These communications were intended for limited distribution to those involved in blending planning. I understand that Exhibit Q was produced to Unocal with the designation “Confidential” pursuant to the Protective Order in this matter. Other than that production, the document has not been distributed to anyone outside of ExxonMobil, to the best of my knowledge. This document reveals ExxonMobil’s long-term business planning and guidance for avoiding the numerical property claims of the Unocal patents, both of which are material to ExxonMobil’s business and reveal the intricacies of Torrance’s current and future blending operations in California. ExxonMobil could suffer serious business injury if the contents of Exhibit Q were to be disclosed publicly.

14. Exhibit R (CX 2168; EXMOUNOBD-0000001 to 010) is a series of spreadsheets containing detailed volumetric, compositional and property information for individual batches of CARB summertime gasoline produced in 2001 and 2002 at the Torrance Refinery. Exhibit S (CX 1783; EXMOUNOBD-0000011 to 015) is a related series of spreadsheets in the same format as Exhibit R, and it contains 2003 Torrance Refinery CARB Phase 3 summertime gasoline batch data. (CARB Phase 3 refers to the gasoline specifications which are used currently at some refineries and which are mandated for 2004.) I understand that these “batch data” documents were designated “Restricted Confidential – For Attorney Eyes Only” pursuant to the Protective Order in this matter before being produced to Unocal because they contain highly confidential and commercially sensitive information about specific production volumes, the particular numerical properties and characteristics of those volumes and the methods by which those properties and characteristics are measured at the Torrance Refinery.

15. Disclosure of Exhibits R and S could cause serious and material harm to the competitive position of ExxonMobil. Persons with access to the information contained in these documents would have access to certain production capacities, blending formulations and input requirements of the Torrance Refinery, and could use this inside information against ExxonMobil for any number of reasons, such as when negotiating exchange agreements or competing for customers. Moreover, this knowledge could permit suppliers or customers of the Torrance Refinery to advantageously adjust their business strategies for CARB summertime gasoline and related products to the serious economic disadvantage of the Torrance Refinery.

16. Exhibit T contains five excerpts from my deposition taken on August 14, 2003, by Respondent's Counsel in this matter. This testimony was given in my capacity as a representative of ExxonMobil for certain topics identified by Unocal. It is my understanding that the entire transcript, including the portions contained in Exhibit T, have been designated "Restricted Confidential – Attorney Eyes Only" pursuant to the Protective Order in this matter. The first excerpt concerns an estimation of the cost of developing and implementing on-line certification at the Benicia Refinery (See Exhibit T at page 56, lines 17 through 22). The second excerpt concerns an estimation of the cost of Torrance's alkylation expansion project (See Exhibit T, page 72, line 23 through page 72, line 8). Changes to Torrance's on-line certification that ExxonMobil is considering, including the estimated cost of the equipment, installation and implementation are discussed in the third excerpt (See Exhibit T, page 76, line 17 through page 77, line 17). The fourth excerpt concerns directives for avoiding the claims of the Unocal patents (See Exhibit T, page 99, line 14 through page 101, line 12). The final excerpt concerns cost projections for avoiding the numerical property claims of the Unocal patents (See Exhibit T, page 104, line 23 through page 105 line 23). All of this information is competitively sensitive and confidential. As discussed in paragraphs 5-10 above, information about ExxonMobil's business methods and technological abilities concerning on-line analysis and certification and methods of blending around the Unocal patent claims is highly material to current operations and cost position of the Torrance Refinery. As with Exhibits A-J dealing with on-line certification, and Exhibits K-N dealing with on-line certification and/or blend-around, public disclosure of testimony on these topics as found in Exhibit T could cause ExxonMobil to suffer serious economic and competitive harm.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this _____ day of October, 2003, in

_____.

Thomas R. Eizember

TABS A – T REDACTED

For reference purposes:

EXHIBIT	CX / RX	PRODUCTION BATES NUMBERS
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N	RX 1073	EXMOUNO-0023945 to 946
O	CX 2095	EXMOUNO-0004460 to 464
P	CX 2092	EXMOUNO-0002779 to 844
Q	RX 1098	EXMOUNO-0024851 to 853
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