UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
Union Oil Company of California, Docket No. 9305
a corporation.

DEPOSITION OF PETER D. VENTURINI
VOLUME I, PAGES 1 - 284
May 13, 2003

(The following is the deposition of PETER D. VENTURINI, taken pursuant to Notice of Taking Deposition, via videotape, at the Hyatt Regency Hotel, Sacramento, California, commencing at approximately 9:07 o'clock a.m., May 13, 2003.)

APPEARANCES:

On Behalf of Union Oil Company of California:

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On Behalf of the Federal Trade Commission:

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You have a very specific procedure as to which comments need to be replied to; don't you?

A. Correct.

Q. And so, for instance, this being August of 1991, this letter was never responded to as part of the formal rulemaking; was it?

A. If this was not part of the hearing record and was not submitted within the 45-day period when we send the staff report out, then it would not have -- and unless he didn't put it into the record at the hearing, it wouldn't have been responded to.

Q. Why is -- Do you have an understanding as to why you have that procedure?

A. Well I think -- I do, but it's -- it's really -- I think this is really a question, because it deals with our responsibilities under the APA and so forth, and I really think that's something that, you know, should be addressed to one of our attorneys.

Q. Okay. Prior to the time that you met with Unocal in June of 1991, Toyota had informed you that they thought T50 reduced emissions; is that right?

A. That's correct.
1 Q. In fact they had told you that they believed T50 reduced hydrocarbon emissions; correct?
2 A. That's correct.
3 Q. And they did that in April of 1991; is that correct?
4 A. I believe that's -- that's correct.
5 Q. And they did that in a document to you --
6 A. Yes.
7 Q. -- at a meeting that you were present at.
8 A. I believe so.
9 Q. Was the document marked confidential, do you recall?
10 A. I don't -- don't recall, but I don't --
11 Q. Well if you have the document you can refresh my memory.
12 A. I'll try.
13 (Respondent's Exhibit 19 was marked for identification.)
14 BY MR. BEEHLER:
15 Q. Looking at Respondent's Exhibit 19, do you see it starts off with a letter to a couple of
16 lawyers, one which has a striking similarity to my name -- a typo there -- from Jim Ryden of CARB. Do
17 you see that?
18 A. Yes.
14:12:20 1  A. We had reformulated gasoline.
14:12:21 2  Q. Are there any other control measures that
14:12:23 3  you can think of that we are missing, or is that
14:12:26 4  pretty much the --
14:12:28 5  A. Control measures that ARB adopts --
14:12:30 6  Q. Right.
14:12:31 7  A. -- or develops and adopts? Yeah, we do
14:12:33 8  toxics control measures, we do consumer products
14:12:37 9  control measures/regulations.
14:12:40 10  Q. There's diesel regulations?
14:12:41 11  A. There's the fuel --
14:12:42 12  Well you mentioned fuels. I incorporated
14:12:44 13  diesel in fuels. There's a diesel regulation,
14:12:48 14  certification fuel specifications.
14:12:53 15  Q. Looking at this particular page now, sir,
14:12:55 16  on Respondent's Exhibit 19, it states here that
14:12:59 17  Toyota reported at the last meeting that the 50
14:13:02 18  percent distillation temperature of gasoline affects
14:13:06 19  hydrocarbon emissions. Do you see that?
14:13:09 20  A. Yes.
14:13:09 21  Q. And specifically that a 10-degree Celsius
14:13:11 22  decrease of T50 reduced hydrocarbons by about 15
14:13:16 23  percent. Do you see that?
14:13:20 25  Q. And going to the last sentence on that
14:13:23 1 page, the test results shows again that a decrease of
14:13:27 2 T50 conclusively reduces hydrocarbon emissions. Do
14:13:32 3 you see that?
14:13:33 4 A. Yes.
14:13:33 5 Q. And you had that information prior to
14:13:34 6 meeting with Unocal in June of 1991; correct?
14:13:38 7 A. Correct.
14:13:40 8 Q. Do you know if that information from Toyota
14:13:43 9 in Exhibit 19, did anybody ever ask them to remove
14:13:48 10 the confidentiality?
14:13:53 11 A. I don't -- don't recall.
14:14:03 12 Q. Okay.
14:14:04 13 A. Although at some point, according to this
14:14:06 14 letter, Toyota did declassify it. So at some point.
14:14:10 15 How that came about I don't recall.
14:14:23 16 (Respondent's Exhibit 20 was
14:14:24 17 marked for identification.)
14:14:24 18 BY MR. BEEHLER:
14:14:28 19 Q. Looking back for just one moment on Exhibit
14:14:30 20 19, nobody ever asked Toyota if they had any patent
14:14:35 21 rights in connection with their document marked
14:14:41 22 confidential; did they?
14:14:42 23 A. I'm not aware of that.
14:14:44 24 MR. ROBERTSON: Objection, calls for
14:14:45 25 speculation, foundation.
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VOLUME II, PAGES 285 - 545

May 14, 2003

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Regency Hotel, Sacramento, California, commencing at
approximately 9:03 o'clock a.m., May 14, 2003.)

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taking in the Phase 3 regulations, and once again we were concerned with, you know, facilitating production and doing whatever we can to basically make the regu -- compliance with these regulations as flexible as possible to, you know, keep -- keep costs down.

Q. Okay. I -- I understand, --
A. Yeah.
Q. -- but how does that reflect fraud or deception by Unocal?
A. Well it's as I said earlier, it's the -- the whole emphasis that we had and to make clear that costs were a very significant concern to us throughout this whole process and why we really feel we were really misled back in 1991, because we have been very concerned about costs.

Q. September 29, 2000, it's five years after you heard about the Unocal patent and in fact the jury has already come back and awarded Unocal a royalty and found infringement; right?
A. Correct.
Q. You didn't consider the Unocal patent as part of these regulations; did you, sir?
A. Well at that -- that time it was my --
Q. Did you consider the Unocal patent as part
of the Phase 3 regulations?

A. No.

Q. Okay.

A. Can I explain --

Q. With the -- with the finding of infringement and a royalty amount, you didn't consider it. Why?

A. Basically because it was still in our view in a state of flux; there was continuing litigation and -- and issues.

Q. When you said it's in a state of flux, in fact CARB took the position that the patent was not valid; didn't they?

A. Yeah, we -- we believed that there were concerns with the validity of the patent.

Q. Right. In fact you came to testify in connection with the refiners as a witness to convince the jury that the patent was not valid; didn't you?

A. Yes.

Q. And CARB itself, through its counsel, including outside counsel, took positions before the United States Supreme Court attempting to convince them to hold the patent invalid; correct?

MR. ROBERTSON: Objection, foundation.
A. I -- I -- I presume so, yeah. There was a lot of activity.

Q. You know they did that. You know that they filed briefs asking the U.S. Supreme Court to do that.

A. In all honesty, I don't recall. We probably did.

Q. Okay.

A. But I'm just being honest. If I'm not certain, I will just tell you I don't -- don't recall.

Q. And it was because of that belief of, as you said, "in flux," but perhaps let's -- let's -- let's call it for what it is, was it a belief that the patent was invalid that you decided not to consider the cost for your Phase 3 regulations?

A. No, I don't -- I don't think so. I think the basic reason is it was still in litigation, there were activities going on in terms of litigation, so nothing had been finalized.

Q. So you wanted to make sure that there was a final determination of validity before -- and infringement before you considered the cost; is that right? Am I right?

A. Could you repeat the question, please?
Q. You wanted to make sure that there was a final determination of validity and infringement before you considered the cost as part of your regulation; right?

A. I don't know if that's exactly -- exactly correct. Keep in mind what we were doing here was looking at the Phase 3 regulations that were over and above the other regulations that we had done, and we were looking at the impact of this -- this regulation.

Q. You just testified that, quote, "I think the basic reason is it was still in litigation, there were activities going on in terms of litigation, so nothing had been finalized." Do you remember that?

A. Yes.

Q. Okay.

A. I said that.

Q. And nothing had been finalized in terms of infringement or validity. That's what you meant; correct?

A. Or the outcome of the -- of the patent issue.

Q. And it is that reason that you did not consider the cost for Phase 3 regulations; --

MR. ROBERTSON: Objection.
Q. -- right?
MR. ROBERTSON: Asked and answered.
A. I -- I think I answered your question, sir.
Q. Isn't that the reason you --
Because that was not finalized, that's why you didn't consider it for your Phase 3 regulations.
MR. ROBERTSON: Objection, asked and answered. You're badgering the witness.
MR. BEEHLER: Go ahead.
A. Well I think I did answer the question.
I'll answer again. It's because there was still ongoing litigation and legal -- legal proceedings in process.
Q. Okay. Anything else on that exhibit?
A. No.
Q. And then we go back to Exhibit 51, sir.
A. Okay. I think this one will be real quick.
Q. And is there anything in addition here that you would like to add? This is, just to identify it, the proposed amendments to the California Phase 3 reformulated gasoline regulations, the initial statement of reasons; right?
A. Correct. I -- I just included this because I wanted to have available this table --
Q. On page --
the story, basically that, oh, by the way, they have
a patent and so forth, and as I characterized
earlier, that there were some strings attached.
Q. Can we go back to my question though?
A. Yes.
Q. If Unocal had said "not confidential" in
that letter instead of "non-proprietary," you would
have used the information, the equations, the data,
the presentation slides as you actually did.
A. Correct.
Q. Okay. If Unocal had said to CARB staff we
have a pending application, but not giving you any
more information, what would you have done?
A. If Unocal had told us there was a pending
patent application, I think the outcome would have
been no regulation.
Q. Okay.
A. We think the outcome would have been no
regulation.
Q. Let's make sure that you understand and are
being very specific in response --
A. Yes.
Q. -- to my question. Okay? If Unocal had
said that they had a pending application but nothing
more, what would you have done?
A. I think I answered that. We would not have had a Phase 2 regulation in November.

Q. Without seeing the Unocal pending application, you would have not had any regulations at all?

A. In November, that's correct.

Q. Weren't you bound by the Clean Air Act to come up with regulations by the end of 1991?

A. We also had to consider cost effectiveness in -- in whatever we do.

Q. Okay. I'm -- I'm just asking this question: Didn't you understand that you were bound by the Clean Air Act, the California Clean Air Act, to come up with regulations by the end of 1991?

MR. ROBERTSON: Objection, misleading.

A. Well the act may have directed us, but that doesn't mean that you just forget any information and just proceed ahead.

Q. I'm just trying to understand.

A. I mean the act has a lot of requirements in it.

Q. Yeah. Weren't you supposed to propose regulations by the end of 1991?

A. If that's in the act, yes. But I'm telling you if Unocal had told us they had a patent applied
for, we would not have taken that regulation to the
board. I'm very confident about that.

Q. Without knowing what the patent even
attempted to claim.

A. That makes it even more reason not to go to
the board.

Q. And how long would you have not gone to the
board?

A. That's really difficult to answer at this
point, but I'm quite certain we would not have taken
a regulation to the board.

Q. You would have never approved a regulation?

A. What we may have --

The only other thing I could -- that I'm
confident we may have done was just taken the EPA
regulation, but that's the only thing that I felt we
would have had an op -- we would have had an option
for at that time.

Q. Look at final statement of reasons 318,
would you?

A. 318?

Q. Yes. It's on page 172.

A. Thank you. 172.

Q. Wickland Oil specifically asked you to
adopt the EPA negotiated rulemaking; didn't they?