
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

**RESPONDENT UNOCAL'S UNOPPOSED MOTION FOR *IN CAMERA* STATUS
FOR TWO ADDITIONAL DOCUMENTS**

Pursuant to Section 3.45 of the Federal Trade Commission's Rules of Practice, Respondent Unocal Corporation ("Unocal") hereby moves for *in camera* treatment of two documents that Complaint Counsel added to its exhibit list after the *in camera* deadline. These documents, CX 1800 and CX 1802, contain highly confidential business information of Unocal. Because Complaint Counsel did not identify CX 1800 and CX 1802 as trial exhibits until after the deadline for requesting *in camera* consideration, an additional motion, Respondent Unocal's Motion For Leave To Submit Two Additional Documents For In Camera Treatment, accompanies this request. *See* Scheduling Order, FTC No. 9305, April 9, 2003. Complaint Counsel do not oppose these motions.

As described more fully below and in the accompanying Second Declaration of Charles O. Strathman ("Second Strathman Decl."), Unocal's former Vice President and presently Unocal's Contract Counsel, both exhibits contain current, highly-sensitive, non-public information that would cause Unocal serious competitive injury if published in this proceeding. CX 1800 and CX 1802 are within the scope of Unocal's previous *in camera* request: CX 1800 is [REDACTED]

[REDACTED]

[REDACTED] CX 1802 is [REDACTED]
[REDACTED].

I. Legal Standard for *In Camera* Treatment

CX 1800 and CX 1802 warrant *in camera* treatment as provided by Commission Rule of Practice 3.45(b) (“Rule 3.45(b”). 16 C.F.R. § 3.45(b). In short, a showing of “serious injury” can be made by “establishing that the documentary evidence is ‘sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury,’ and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions.” Order On Respondent’s Motions for In Camera Treatment, FTC No. 9305, at 3 (October 7, 2004) (citations omitted) (“*In Camera* Order”).

II. The Two Documents Should Receive *In Camera* Treatment

The two documents contain highly sensitive information that needs to remain in confidence. For these documents, the factors applicable to Rule 3.45(b) compel the conclusion that the documents are sufficiently secret and material to warrant *in camera* treatment. Exhibits CX 1800 and CX 1802 relate to licensing proposals between [REDACTED]. For the same reasons that the Court granted Unocal’s motion to treat licensing agreements as confidential in its original *In Camera* Order, these two exhibits should also be granted *in camera* status.

First, these exhibits contain extremely sensitive commercial and financial pertaining to licensing. Second Strathman Decl. ¶ 5. [REDACTED]
[REDACTED]

[REDACTED] disclosed simply because there is a government investigation against Unocal.

Second, CX 1800 and CX 1802 contain confidential information including extremely sensitive commercial and financial information pertaining to [REDACTED]. [REDACTED]. Second Strathman Decl. ¶ 6. Thus, the information contained in these documents is non-public and confidential. Maintaining the competitive sensitivity and the value of such information is material to Unocal's future success in its licensing efforts. Allowing these exhibits to become part of the public record will greatly impact the future ability of Unocal to negotiate and enter into licensing agreements. Unocal never consented to the public disclosure of these documents either in connection to this proceeding or elsewhere. *Id.* To the extent that any of them have been disclosed to third parties, Unocal has first secured promises of confidentiality. *Id.*

Finally, CX 1800 and CX 1802 require *in camera* treatment for 11 years—until the last patent at issue expires. Since Unocal intends to license this technology throughout the life of its relevant patents, the contents of [REDACTED] will remain sensitive for quite some time. A period of 11 years is an appropriate length of time for *in camera* protection for documents containing confidential information regarding licensing in this particular case. *See In Camera Order* at 3 (granting *in camera* status until 2015 on many licensing-related documents).

Unocal is not waiving its right to challenge the admissibility of either of these documents at a later time, and reserves the right to make appropriate objections should the need arise.

For the foregoing reasons, Unocal respectfully requests that the information in CX 1800 and CX 1802 be given *in camera* treatment, kept confidential, and not placed on the public record of this proceeding. This information meets the criteria set forth in FTC precedent as qualifying for *in camera* treatment, and therefore, should be accorded such protection. In the event the Commission intends to disclose *in camera* Unocal information in a final decision, Unocal respectfully requests that the Commission notify both David W. Beehler of Robins, Kaplan, Miller & Ciresi, L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402, telephone: 612-349-0802, facsimile: 612-339-4181, and Unocal Contract Counsel, Charles O. Strathman, Unocal Corporation, 2141 Rosecrans, Suite 4058, El Segundo, CA 90245, telephone: 310-726-7763, facsimile: 310-726-7815.

Dated: October 29, 2004

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: Signature on File with the Commission

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ATTORNEYS FOR UNION OIL COMPANY OF
CALIFORNIA

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2004, I caused the original and two paper copies to be delivered for filing via Hand Delivery, and caused an electronic copy to be delivered for filing via e-mail of the **PUBLIC** version of Respondent Unocal's Unopposed Motion for *in Camera* Status for Two Additional Documents to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW, Rm. H-159
Washington, DC 20580
E-mail: secretary@ftc.gov

I hereby certify that on November 1, 2004, I also caused two paper copies of Respondent Unocal's Unopposed Motion for *in Camera* Status for Two Additional Documents to be delivered via Hand Delivery to:

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

I hereby certify that on November 1, 2004, I also caused one paper copy of Respondent Unocal's Unopposed Motion for *in Camera* Status for Two Additional Documents to be served upon each person listed below via hand delivery:

J. Robert Robertson, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue NW, Drop 6264
Washington, DC 20001

Geoffrey Oliver, Esq.
through Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue NW, Drop 6264
Washington, DC 20001

Original Signature on File with Commission

Bethany D. Krueger

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PROPOSED ORDER

On October 29, 2003, Respondent Union Oil Company of California (“Unocal”) filed a motion for *in camera* treatment of confidential business information contained in two additional documents that Complaint Counsel added to their exhibit list after the *in camera* deadline.

IT IS HEREBY ORDERED that Unocal’s Motion is GRANTED. The information set forth in CX 1800 and CX 1802 will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for eleven years.

IT IS FURTHER ORDERED that only the Respondent, its counsel, authorized Federal Trade Commission (“Commission”) personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED:

Date: _____

D. Michael Chappell
Administrative Law Judge

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