

PUBLIC-REDACTED

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen Ohlhausen, Acting Chairman



In the Matter of

Tronox Limited
a corporation,

National Industrialization Company
(TASNEE)
a corporation,

National Titanium Dioxide
Company Limited (Cristal),
a corporation,

AND

Cristal USA Inc.
a corporation.

Docket No. 9377

**NON-PARTY PPG INDUSTRIES, INC.'S MOTION FOR *IN CAMERA*
TREATMENT PURSUANT TO FTC RULE 3.45**

PPG Industries, Inc. ("PPG"), by and through its undersigned counsel and pursuant to 16 C.F.R. § 3.45(b), respectfully moves the Commission for *in camera* treatment of certain PPG documents designated by Complaint Counsel and Respondents as exhibits in the administrative hearing in this matter (the "Confidential Documents"). PPG produced these documents in response to a civil investigative demand and third party subpoenas. As explained more fully below, these documents are entitled to *in camera* treatment because they contain competitively sensitive information that is material to PPG's business, such that public disclosure of this information would result in serious competitive injury to PPG. PPG also requests that any

hearing testimony concerning these documents, or designations of deposition testimony, be heard on an *in camera* basis.

BACKGROUND

PPG is a manufacturer and distributor of coatings products, for which one of the key input materials is TiO₂. On April 19, 2018, PPG received notice from Complaint Counsel and Respondents that they intend to use certain PPG documents that had been designated Confidential at the administrative hearing in this matter. *See* Exhibit A (FTC Letter); Exhibit B (Respondents' Letter). Complaint counsel noticed eight documents. *See* Exhibit A. Respondents noticed 38 documents.¹ *See* Exhibit B.

Of these documents, PPG seeks full *in camera* treatment of 24 documents and partial *in camera* treatment of 9 documents, a list of which is attached hereto as Exhibit D, and copies of which are attached hereto as Exhibit F.² All of the documents for which PPG seeks *in camera* treatment are confidential business documents that contain competitively sensitive, proprietary, or trade secret information about material aspects of PPG's business, such that PPG would be significantly harmed in its ability to compete if this information were disclosed to the public. In support of this motion, PPG relies on the Declaration of Mr. Paul Malichky ("Malichky Decl."), who is the Director of Raw Material Purchasing for PPG. *See* Exhibit E. Mr. Malichky's declaration provides specific information about the documents for which PPG is seeking *in camera* treatment.

¹ Respondents designated six of the same documents as Complaint Counsel and two of PPG's documents twice.

² For many exhibits, it was unclear whether Respondents intended to include the full document family. After contacting Respondents, PPG was provided with an amended list on May 1, 2018. *See* Exhibit C. Given this late notice, PPG is filing Exhibit E under seal in its entirety out of an abundance of caution.

Accordingly, for the reasons stated herein and in the Declaration of Mr. Paul Malichky, PPG respectfully requests that *in camera* treatment be granted for the documents identified in Exhibit D for the durations of time set forth below.

LEGAL STANDARD

Under FTC Rule 3.45(b), *in camera* treatment is appropriate where “public disclosure would likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” 16 C.F.R. 3.45(b). Stated differently, *in camera* treatment should be granted where the information is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

In assessing whether information is sufficiently secret and material, the Commission may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977). Applying these factors, the Commission has held that “[t]he likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *See In re Dura Lube Corp.*, No. 9292, 1999 FTC LEXIS 255, at *7 (Dec. 23, 1999) (quoting *Gen. Foods*, 95 F.T.C. at 355).

Requests for *in camera* treatment that are made by non-parties should be given “special solicitude.” *See In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967); *see also In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984).

ARGUMENT

I. PPG'S DOCUMENTS ARE SECRET AND MATERIAL SUCH THAT DISCLOSURE WOULD RESULT IN SERIOUS HARM TO PPG.

As the Commission has held, “confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1185 (1961). Here, protection is warranted because the Confidential Documents for which PPG is seeking *in camera* treatment are both secret and material to PPG’s business and would cause serious competitive injury to PPG if disclosed to the public.

First, as explained in Mr. Malichky’s declaration, the Confidential Documents contain information that is material to PPG’s business. Because TiO₂ is a key ingredient in PPG’s coatings products, PPG must have sufficient volume of TiO₂ at a competitive price to compete with other coatings manufacturers, who also use TiO₂ in their products. The Confidential Documents contain competitively sensitive information about PPG’s purchase and use of TiO₂, including its pricing, volume, and supply agreements with TiO₂ suppliers, *see, e.g.*, Malichky Decl. ¶¶ 6, 8, 10-12, 15-18, 20-22, 24-30; its specific strategy with respect to TiO₂ supply, *see, e.g., id.* ¶¶ 6, 8, 11, 13-14, 16-21, 24, 27-28, 32; its negotiating strategy and status of negotiations with TiO₂ suppliers, *see, e.g., id.* ¶¶ 6, 11-13, 15-16, 18, 26-30, 35; and its process for qualifying TiO₂ for use in its product formulas, *see, e.g., id.* ¶¶ 30, 32.

Second, given the competitive significance of this information, PPG has taken great care to protect this information from public disclosure. As explained in Mr. Malichky’s declaration, PPG does not share information relating to TiO₂ pricing, volume, supply agreements, negotiations, supply strategy, or product formulations with employees of PPG generally. Instead, it limits distribution of this information to a limited set of PPG employees, which generally includes a handful of employees in purchasing and a small number of employees in

senior management. Certain types of documents are shared with an even more limited set of PPG employees. For example, PX4124 was prepared for PPG's operating committee and was shared only with that group. To protect disclosure of this information more broadly, PPG does not save or store this information in places that are generally accessible to PPG employees. PPG does not share any of this information with its customers, competitors, or suppliers. Nor does it share this information with non-PPG personnel in the ordinary course of business. In producing these documents to the parties, PPG designated all of this information "Confidential" pursuant to the Protective Order.

Third, PPG is likely to suffer severe financial harm and competitive disadvantage if the Confidential Documents are made public. For example, if information about PPG's pricing, volume, and supply and negotiating strategy for TiO₂ is made public, Respondents, and other TiO₂ suppliers, may use this information to PPG's disadvantage in future negotiations. TiO₂ suppliers may refuse to offer a lower price, knowing that PPG has accepted a higher price from other suppliers. PPG could also lose bargaining leverage with TiO₂ suppliers to the extent they know the degree to which PPG could switch to other suppliers or TiO₂ substitutes. Alternatively, PPG's competitors, who also use TiO₂, may use this information to their advantage to disrupt PPG's supply, particularly when the market is tight and supply is low. Competitors may also use information about PPG's TiO₂ qualification process or product formulas to reverse-engineer PPG's products. Put simply, disclosure of the Confidential Documents will result in serious loss of business advantage to PPG.

Moreover, the Third Circuit recently found that "[t]here is little doubt" that the TiO₂ industry "was conducive to price fixing" because it is a "highly concentrated market for a commodity-like product with no viable substitutes and substantial barriers to entry." *Valspar*

PPG’s formulations, as well as its process for qualifying TiO₂, are highly confidential. PPG does not share its formulations or qualification process with customers, competitors, or TiO₂ suppliers. *See* Malichky Decl. ¶¶ 8, 32. PPG has developed extensive internal processes and spent significant time and resources to perfect the testing of TiO₂ grades and its product formulas. *Id.* ¶ 32. PPG’s TiO₂ qualification and product formulas are highly technical and kept secret because PPG’s coatings formulas, and the TiO₂ it uses in those formulas, are the primary basis on which PPG differentiates itself from other coatings manufactures. *Id.* Accordingly, the competitive significance of PPG’s product formulas and qualification process are unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate.

III. CERTAIN DOCUMENTS RELATING TO THE EUROPEAN COMMISSION SHOULD BE GIVEN PERMANENT *IN CAMERA* TREATMENT.

[REDACTED]

[REDACTED] *See* Malichky Decl. ¶ 35.

[REDACTED]

[REDACTED]

[REDACTED] The EC has strict rules

governing the protection of information provided to it pursuant to an investigation. Under the EC Merger Regulation, information collected from third parties may be used only for “the relevant request, investigation or hearing” and may not be disclosed. *See* Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) at Article 17. Only the merging parties are granted access to the EC’s file, and even then, disclosure is limited to information that has been designated not confidential. *See id.* at Article 18; *see also* Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57

of the EEA Agreement and Council Regulation (EC) No. 139/2004 ¶ II(A)(7). [REDACTED]

[REDACTED]

[REDACTED] See EC Merger Regulation at Article 20.

Under federal law, where a foreign entity has taken a clear position on the confidentiality of particular documents, principles of comity should be weighed against the need for production. See, e.g., *In re Rubber Chems. Antitrust Litig.*, 486 F. Supp. 2d 1078, 1084 (N.D. Cal. 2007) (principles of comity outweigh need for production of EC documents); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 (JG)(JO), 2010 WL 3420517, at *1 (E.D.N.Y. Aug. 27, 2010) (denying motion to compel documents produced in connection with EC investigation). Here, principles of comity, and the harm to PPG in making these documents public, far outweigh any value in making them public.

[REDACTED]

[REDACTED]

[REDACTED] This type of information has no bearing on the potential anticompetitive effects of the proposed merger between Tronox and Cristal or its legality under U.S. antitrust law. To the extent these documents contain information that is relevant, its

[REDACTED]

[REDACTED] and should be granted *in camera* treatment. See Malichky Decl. ¶ 35.

Given the low probative value of these communications, the need to make this information public does not outweigh the European Commission's strong interest in keeping its proceedings private.

IV. ALL OTHER DOCUMENTS SHOULD BE GIVEN *IN CAMERA* TREATMENT FOR FIVE YEARS.

PPG's remaining Confidential Documents merit *in camera* treatment for five years. *See* Malichky Decl. ¶¶ 9-30. Where *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 at * 6 (April 4, 2017). Five years is appropriate because, in the TiO₂ industry, the pricing cycle often lasts three to five years. Moreover, PPG's supply and negotiating strategy are ongoing.

While there is a presumption that *in camera* treatment will not be granted for information that is more than three years old, the presumption can be overcome where the applicant is able to show that such material remains competitively sensitive. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 at * 3 (April 4, 2017). The nature of the industry in which PPG competes is such that information remains competitively sensitive for many years. As explained in Mr. Malichky's declaration, pricing and volume information from years prior can be used by suppliers and competitors to back-calculate PPG's price relative to the market, which can be used to PPG's disadvantage in supply negotiations. Malichky Decl. ¶ 20. Moreover, certain aspects of its supply strategy have been ongoing for several years. *See, e.g., id.* ¶ 34,

CONCLUSION

For the foregoing reasons, PPG respectfully requests that the Commission grant its motion for *in camera* treatment pursuant to FTC Rule 3.45(b) for the durations of time outlined herein.

Dated: May 1, 2018

Respectfully submitted,

/s/ J. Robert Robertson

J. Robert Robertson

Leigh L. Oliver

Kimberly D. Rancour

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Attorneys for PPG Industries, Inc.

Notice of Electronic Service

I hereby certify that on May 02, 2018, I filed an electronic copy of the foregoing Motion for In Camera Treatment - PUBLIC, Exhibits A-E PUBLIC Submission, Exhibit F - PUBLIC Submission, Proposed Order, Certificate of Service, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on May 02, 2018, I served via E-Service an electronic copy of the foregoing Motion for In Camera Treatment - PUBLIC, Exhibits A-E PUBLIC Submission, Exhibit F - PUBLIC Submission, Proposed Order, Certificate of Service, upon:

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

COMMISSIONERS: Maureen Ohlhausen, Acting Chairman

In the Matter of

**Tronox Limited
a corporation,**

**National Industrialization Company
(TASNEE)
a corporation,**

**National Titanium Dioxide
Company Limited (Cristal),
a corporation,**

AND

**Cristal USA Inc.
a corporation.**

Docket No. 9377

[PROPOSED] ORDER
ON NON-PARTY PPG INDUSTRIES, INC.'S
MOTION FOR *IN CAMERA* TREATMENT

Upon consideration of non-party PPG Industries, Inc.'s Motion for *In Camera* Treatment, and finding good cause, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment of a period of five years from the date of this Order in their entirety:

Exhibit No.	Date	Beginning Bates No.	Ending Bates No.
PX4032	07/27/17	PPG-TROX-00000954	PPG-TROX-00000956
PX4120	10/14/16	PPG-TROX-00053432	PPG-TROX-00053432
PX4124	2/6/18	PPG-TROX-00053702	PPG-TROX-00053702

N/A	7/13/17	PPG-TROX-00000203	PPG-TROX-00000206
N/A	1/26/18	PPG-TROX-00016457	PPG-TROX-00016459
N/A	05/01/17	PPG-TROX-00029141	PPG-TROX-00029144
N/A	03/26/17	PPG-TROX-00026390	PPG-TROX-00026401
N/A	04/21/16	PPG-TROX-00036704	PPG-TROX-00036706
N/A	06/26/16	PPG-TROX-00057181	PPG-TROX-00057183
N/A	02/16/16	PPG-TROX-00069646	PPG-TROX-00069648
N/A	09/12/16	PPG-TROX-00090903	PPG-TROX-00090907
N/A	06/08/17	PPG-TROX-00063006	PPG-TROX-00063008
N/A	8/16/16	PPG-TROX-00089341	PPG-TROX-00089351
N/A	11/1/14	PPG-TROX-00072525	PPG-TROX-0007525
N/A	1/26/17	PPG-TROX-00023212	PPG-TROX-00023215

Furthermore, the redacted portions of the following documents are to be provided *in camera* treatment of a period of five years from the date of this Order:

Exhibit No.	Date	Beginning Bates No.	Ending Bates No.
PX4079	07/28/17	PPG-TROX-00001422	PPG-TROX-00001424
PX4106	10/18/17	PPG-TROX-00008492	PPG-TROX-00008494
PX4113	07/31/17	N/A	N/A
N/A	07/31/17	PPG-TROX-00073597	PPG-TROX-00073613
PX7025	0/16/18	N/A	N/A
PX8000	10/6/17	N/A	N/A

N/A	10/6/17	PPG-TROX-00073716	PPG-TROX-00073722
N/A	11/26/17	PPG-TROX-00011405	PPG-TROX-00011408
N/A	04/06/16	PPG-TROX-00035207	PPG-TROX-0005213

It is FURTHER ORDERED, that the following documents are to be provided permanent *in camera* treatment from the date of this Order in their entirety:

Exhibit No.	Date	Beginning Bates No.	Ending Bates No.
N/A	7/4/17	PPG-TROX-00032262	PPG-TROX-00032277
N/A	6/29/16	PPG-TROX-00056635	PPG-TROX-00056639
N/A	6/29/16	PPG-TROX-00056640	PPG-TROX-00056645
N/A	1/13/16	PPG-TROX-00068456	PPG-TROX-00068462
N/A	6/6/16	PPG-TROX-00073328	PPG-TROX-00073329
N/A	9/29/17	PPG-TROX-00066915	PPG-TROX-00066932
N/A	7/15/16	PPG-TROX-00071984	PPG-TROX-00071986
N/A	12/14/17	PPG-TROX-00073841	PPG-TROX-00073844
N/A	02/26/18	PPG-TROX-00097473	PPG-TROX-00097552

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Dated: _____, 2018.

EXHIBIT A

April 19, 2018 FTC Letter



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

April 19, 2018

VIA EMAIL TRANSMISSION

PPG Industries, Inc.
c/o Leigh Oliver
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004
leigh.oliver@hoganlovells.com

RE: *In the Matter of Tronox Limited et al.*, Docket No. 9377

Dear Leigh:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on May 18, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or

affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Second Revised Scheduling Order (revised on February 23, 2018), **the deadline for filing motions seeking *in camera* treatment is May 1, 2018**. A copy of the February 23, 2018 Second Revised Scheduling Order and the December 20, 2017 original Scheduling Order, which contains Additional Provisions, can be found at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>.

If you have any questions, please feel free to contact me at (202) 326-2823.

Sincerely,

/s/ Joonsuk Lee

Joonsuk Lee

Counsel Supporting the Complaint

Attachment

Attachment A

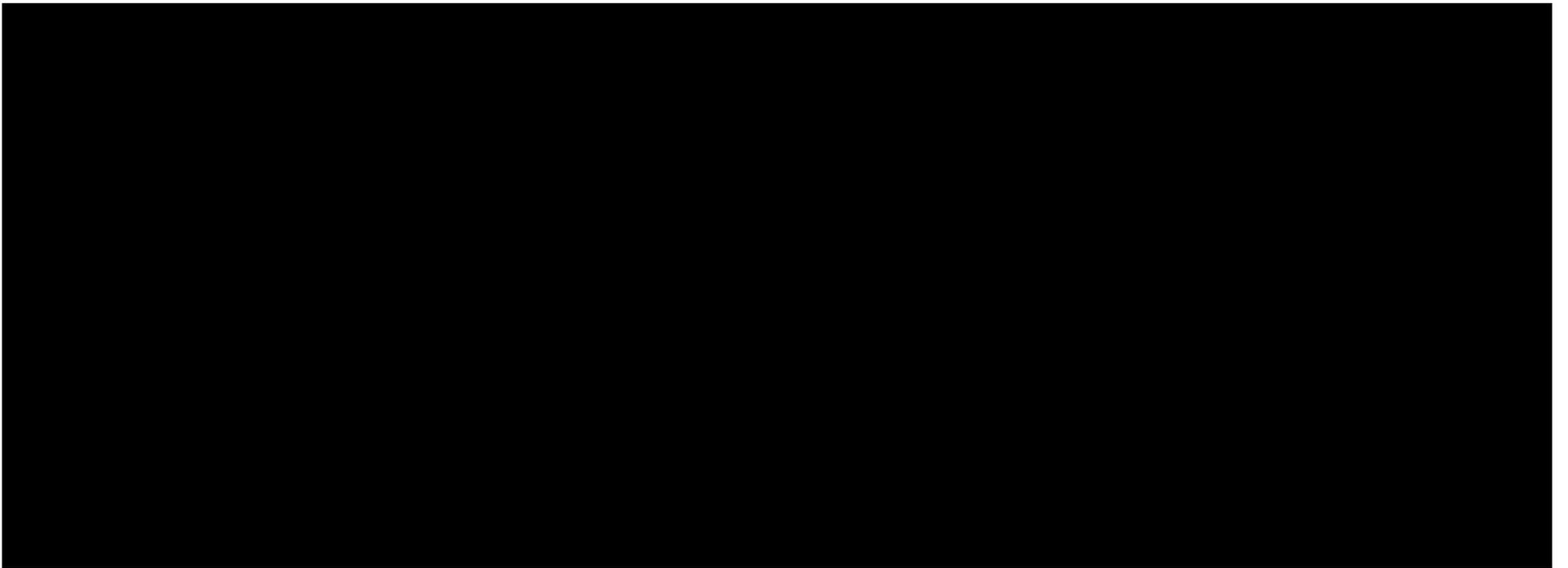


EXHIBIT B

April 19, 2018 Tronox Letter

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April 19, 2018

BY EMAIL AND FEDEXJ. Robert Robertson, Esq.
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
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Re: In re Tronox Limited (FTC Docket No. 9377)

Dear Mr. Robertson:

This letter services as notice, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017, that Tronox Limited (“Tronox”), National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively “Respondents”) plan to introduce the following documents or transcripts containing confidential material produced by PPG Industries, Inc. at the hearing before Judge Chappell:

Bates Begin	Bates End
PPG-TROX-00000203	PPG-TROX-00000206
PPG-TROX-00000954	PPG-TROX-00000956
PPG-TROX-00001422	PPG-TROX-00001424
PPG-TROX-00007873	PPG-TROX-00007873
PPG-TROX-00008492	PPG-TROX-00008494
PPG-TROX-00011406	PPG-TROX-00011408
PPG-TROX-00016457	PPG-TROX-00016459
PPG-TROX-00023213	PPG-TROX-00023214
PPG-TROX-00026391	PPG-TROX-00026392
PPG-TROX-00026394	PPG-TROX-00026401
PPG-TROX-00029142	PPG-TROX-00029142
PPG-TROX-00032263	PPG-TROX-00032274
PPG-TROX-00035208	PPG-TROX-00035213
PPG-TROX-00036705	PPG-TROX-00036705

KIRKLAND & ELLIS LLP

J. Robert Robertson, Esq.
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Bates Begin	Bates End
PPG-TROX-00049561	PPG-TROX-0004956
PPG-TROX-00053432	PPG-TROX-00053432
PPG-TROX-00056637	PPG-TROX-00056639
PPG-TROX-00056641	PPG-TROX-00056641
PPG-TROX-00056642	PPG-TROX-00056645
PPG-TROX-00057182	PPG-TROX-00057182
PPG-TROX-00063007	PPG-TROX-00063007
PPG-TROX-00066921	PPG-TROX-00066921
PPG-TROX-00068457	PPG-TROX-00068462
PPG-TROX-00069647	PPG-TROX-00069647
PPG-TROX-00071984	PPG-TROX-00071985
PPG-TROX-00072525	PPG-TROX-00072525
PPG-TROX-00073328	PPG-TROX-00073329
PPG-TROX-00073469	PPG-TROX-00073469
PPG-TROX-00073470	PPG-TROX-00073483
PPG-TROX-00073484	PPG-TROX-00073485
PPG-TROX-00073670	PPG-TROX-00073673
PPG-TROX-00073716	PPG-TROX-00073722
PPG-TROX-00073841	PPG-TROX-00073844
PPG-TROX-00087547	PPG-TROX-00087547
PPG-TROX-00089342	PPG-TROX-00089348
PPG-TROX-00090904	PPG-TROX-00090907
PPG-TROX-00097473	PPG-TROX-00097552

- PPG's response to the Federal Trade Commission's Civil Investigative Demand
- Declaration of Paul Malichky
- Deposition Transcript of Paul Malichky (and accompanying exhibits)

Per paragraph seven of the Scheduling Order, entered December 20, 2017, I inform you "of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC

KIRKLAND & ELLIS LLP

J. Robert Robertson, Esq.
April 19, 2018
Page 3

LEXIS 14 (Jan. 25, 2006).¹ Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge.”

Sincerely,



Michael DeRita

¹ “Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence ‘be placed *in camera* only (a) after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting in camera treatment or (b) after finding that the material constitutes sensitive personal information.” *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *see also In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015).

EXHIBIT C

May 1, 2018 Tronox Email

From: Hansen, Rachel S. <rachel.hansen@kirkland.com>
Sent: Tuesday, May 01, 2018 6:45 PM
To: Rancour, Kimberly D.; Oliver, Leigh L.
Subject: FW: Tronox/Cristal - Third Party Notice Letter
Attachments: PPG Notice Ltr.pdf

Kim,

As discussed on our phone call earlier today, our notice to you, above, regarding the documents we intend to introduce at trial, identified only single members of families rather than entire families as we had intended. Below, please find documents we initially identified, followed by the full Bates ranges for their families, which is what we intended to identify:

Begin Bates	End Bates	Family Begin	Family End
PPG-TROX-00000203	PPG-TROX-00000206	PPG-TROX-00000203	PPG-TROX-00000207
PPG-TROX-00000954	PPG-TROX-00000956	PPG-TROX-00000954	PPG-TROX-00000956
PPG-TROX-00001422	PPG-TROX-00001424	PPG-TROX-00001422	PPG-TROX-00001424
PPG-TROX-00007873	PPG-TROX-00007873	PPG-TROX-00007872	PPG-TROX-00007873
PPG-TROX-00008492	PPG-TROX-00008494	PPG-TROX-00008492	PPG-TROX-00008494
PPG-TROX-00011406	PPG-TROX-00011408	PPG-TROX-00011405	PPG-TROX-00011408
PPG-TROX-00016457	PPG-TROX-00016459	PPG-TROX-00016457	PPG-TROX-00016460
PPG-TROX-00023213	PPG-TROX-00023214	PPG-TROX-00023213	PPG-TROX-00023215
PPG-TROX-00026391	PPG-TROX-00026392	PPG-TROX-00026390	PPG-TROX-00026401
PPG-TROX-00026394	PPG-TROX-00026401	PPG-TROX-00026390	PPG-TROX-00026401
PPG-TROX-00029142	PPG-TROX-00029142	PPG-TROX-00029141	PPG-TROX-00029144
PPG-TROX-00032263	PPG-TROX-00032274	PPG-TROX-00032262	PPG-TROX-00032277
PPG-TROX-00035208	PPG-TROX-00035213	PPG-TROX-00035207	PPG-TROX-00035214
PPG-TROX-00036705	PPG-TROX-00036705	PPG-TROX-00036705	PPG-TROX-00036706
PPG-TROX-00049561	PPG-TROX-0004956	PPG-TROX-00049560	PPG-TROX-00049562
PPG-TROX-00053432	PPG-TROX-00053432	PPG-TROX-00053432	PPG-TROX-00053432
PPG-TROX-00056637	PPG-TROX-00056639	PPG-TROX-00056635	PPG-TROX-00056639
PPG-TROX-00056641	PPG-TROX-00056641	PPG-TROX-00056640	PPG-TROX-00056645
PPG-TROX-00056642	PPG-TROX-00056645	PPG-TROX-00056642	PPG-TROX-00056645
PPG-TROX-00057182	PPG-TROX-00057182	PPG-TROX-00057181	PPG-TROX-00057183
PPG-TROX-00063007	PPG-TROX-00063007	PPG-TROX-00063006	PPG-TROX-00063008
PPG-TROX-00066918	PPG-TROX-00066921	PPG-TROX-00066915	PPG-TROX-00066932
PPG-TROX-00068457	PPG-TROX-00068462	PPG-TROX-00068456	PPG-TROX-00068462
PPG-TROX-00069647	PPG-TROX-00069647	PPG-TROX-00069646	PPG-TROX-00069648
PPG-TROX-00071984	PPG-TROX-00071985	PPG-TROX-00071984	PPG-TROX-00071988
PPG-TROX-00072525	PPG-TROX-00072525	PPG-TROX-00072525	PPG-TROX-00072525
PPG-TROX-00073328	PPG-TROX-00073329	PPG-TROX-00073328	PPG-TROX-00073329
PPG-TROX-00073469	PPG-TROX-00073469	PPG-TROX-00073469	PPG-TROX-00073483
PPG-TROX-00073470	PPG-TROX-00073483	PPG-TROX-00073469	PPG-TROX-00073483

PPG-TROX-00073484	PPG-TROX-00073485	PPG-TROX-00073484	PPG-TROX-00073485
PPG-TROX-00073670	PPG-TROX-00073673	PPG-TROX-00073669	PPG-TROX-00073673
PPG-TROX-00073717	PPG-TROX-00073722	PPG-TROX-00073715	PPG-TROX-00073722
PPG-TROX-00073841	PPG-TROX-00073844	PPG-TROX-00073841	PPG-TROX-00073844
PPG-TROX-00087547	PPG-TROX-00087547	PPG-TROX-00087546	PPG-TROX-00087547
PPG-TROX-00089342	PPG-TROX-00089348	PPG-TROX-00089341	PPG-TROX-00089351
PPG-TROX-00090904	PPG-TROX-00090907	PPG-TROX-00090903	PPG-TROX-00090909
PPG-TROX-00097473	PPG-TROX-00097552	PPG-TROX-00097473	PPG-TROX-00097552
PPG-TROX-00097557	PPG-TROX-00097562	PPG-TROX-00097557	PPG-TROX-00097562

Please feel free to contact me again if you have any questions.

Thanks,

Rachel

Rachel Hansen

Associate

KIRKLAND & ELLIS LLP

655 Fifteenth Street, N.W., Washington, D.C. 20005

T +1 202 879 5234 M + 202 713 0431

F +1 202 879 5200

rachel.hansen@kirkland.com

From: Hansen, Rachel S.

Sent: Friday, April 20, 2018 11:02 AM

To: Robertson, J. Robert <robby.robertson@hoganlovells.com>

Cc: *Kimberly.rancour@hoganlovells.com <Kimberly.rancour@hoganlovells.com>; Oliver, Leigh L. <leigh.oliver@hoganlovells.com>

Subject: RE: Tronox/Cristal - Third Party Notice Letter

Hi Kim and Leigh,

Please find the below-referenced letter attached, for your convenience (in case Robby did not forward separately).

Thanks,

Rachel

From: Robertson, J. Robert [<mailto:robby.robertson@hoganlovells.com>]

Sent: Friday, April 20, 2018 10:52 AM

To: Hansen, Rachel S. <rachel.hansen@kirkland.com>

Cc: *Kimberly.rancour@hoganlovells.com <Kimberly.rancour@hoganlovells.com>; Oliver, Leigh L. <leigh.oliver@hoganlovells.com>

Subject: Re: Tronox/Cristal - Third Party Notice Letter

Please always copy Kim and Leigh on all correspondence. We are not in the same offices. And I am on vacation. Thanks.
Robby

On Apr 19, 2018, at 10:54 PM, Hansen, Rachel S. <rachel.hansen@kirkland.com> wrote:

Please find attached a letter, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017, that Tronox Limited (“Tronox”), National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively “Respondents”) plan to introduce documents or transcripts containing confidential material produced by PPG at the hearing before Judge Chappell. A copy of the letter is also being set to you via FedEx.

Please contact me if you have any questions.

Rachel Hansen

Associate

KIRKLAND & ELLIS LLP

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F +1 202 879 5200

rachel.hansen@kirkland.com

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<PPG Notice Ltr.PDF>

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EXHIBIT D

List of PPG Industries, Inc.'s Documents Under *In Camera* Review – Full and Partial Treatment

**List of PPG Industries, Inc.'s Documents
Under In Camera Review – Full and Partial
Treatment**

Exhibit No.	Date	Beginning Bates No.	Ending Bates No.
PX4032	07/27/17	PPG-TROX-00000954	PPG-TROX-00000956
PX4120	10/14/16	PPG-TROX-00053432	PPG-TROX-00053432
PX4124	2/6/18	PPG-TROX-00053702	PPG-TROX-00053702
N/A	7/13/17	PPG-TROX-00000203	PPG-TROX-00000206
N/A	1/26/18	PPG-TROX-00016457	PPG-TROX-00016459
N/A	05/01/17	PPG-TROX-00029141	PPG-TROX-00029144
N/A	03/26/17	PPG-TROX-00026390	PPG-TROX-00026401
N/A	04/21/16	PPG-TROX-00036704	PPG-TROX-00036706
N/A	06/26/16	PPG-TROX-00057181	PPG-TROX-00057183
N/A	02/16/16	PPG-TROX-00069646	PPG-TROX-00069648
N/A	09/12/16	PPG-TROX-00090903	PPG-TROX-00090907
N/A	06/08/17	PPG-TROX-00063006	PPG-TROX-00063008
N/A	8/16/16	PPG-TROX-00089341	PPG-TROX-00089351
N/A	11/1/14	PPG-TROX-00072525	PPG-TROX-0007525
N/A	1/26/17	PPG-TROX-00023212	PPG-TROX-00023215
PX4079	07/28/17	PPG-TROX-00001422	PPG-TROX-00001424
PX4106	10/18/17	PPG-TROX-00008492	PPG-TROX-00008494
PX4113	07/31/17	N/A	N/A
N/A	07/31/17	PPG-TROX-00073597	PPG-TROX-00073613
PX7025	0/16/18	N/A	N/A

**List of PPG Industries, Inc.'s Documents
Under In Camera Review – Full and Partial
Treatment**

Exhibit No.	Date	Beginning Bates No.	Ending Bates No.
PX8000	10/6/17	N/A	N/A
N/A	10/6/17	PPG-TROX-00073716	PPG-TROX-00073722
N/A	11/26/17	PPG-TROX-00011405	PPG-TROX-00011408
N/A	04/06/16	PPG-TROX-00035207	PPG-TROX-0005213
N/A	7/4/17	PPG-TROX-00032262	PPG-TROX-00032277
N/A	6/29/16	PPG-TROX-00056635	PPG-TROX-00056639
N/A	6/29/16	PPG-TROX-00056640	PPG-TROX-00056645
N/A	1/13/16	PPG-TROX-00068456	PPG-TROX-00068462
N/A	6/6/16	PPG-TROX-00073328	PPG-TROX-00073329
N/A	9/29/17	PPG-TROX-00066915	PPG-TROX-00066932
N/A	7/15/16	PPG-TROX-00071984	PPG-TROX-00071986
N/A	12/14/17	PPG-TROX-00073841	PPG-TROX-00073844
N/A	02/26/18	PPG-TROX-00097473	PPG-TROX-00097552

EXHIBIT E

DECLARATION OF PAUL MALICHKY

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen Ohlhausen, Acting Chairman

In the Matter of

Tronox Limited
a corporation,

National Industrialization Company
(TASNEE)
a corporation,

National Titanium Dioxide
Company Limited (Cristal),
a corporation,

AND

Cristal USA Inc.
a corporation.

Docket No. 9377

**DECLARATION OF PAUL MALICHKY IN SUPPORT OF NON-PARTY PPG
INDUSTRIES, INC.’S MOTION FOR *IN CAMERA* TREATMENT**

I, Paul Malichky, hereby declare as follows:

1. I am the Director of Raw Material Purchasing for PPG Industries, Inc. (“PPG”). I make this declaration in support of Non-Party PPG Industries, Inc.’s Motion for *In Camera* Treatment (the “Motion”). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. PPG, based in Pittsburgh, Pennsylvania, is a global manufacturer of coatings products, for which one of the key input materials is titanium dioxide (“TiO₂”). I joined PPG in 2008 and have worked in various capacities at PPG since then, including as Manager, Regulatory

and Emerging Issues; Director, Product Stewardship; and now as Director of Raw Material Purchasing.

3. In my current position, I am responsible for procuring all of the TiO₂ used by PPG, which includes negotiating volume and price terms with TiO₂ suppliers. I am also involved in developing and implementing PPG's TiO₂ supply strategies, which include among other things, developing alternative sources of supply and exploring TiO₂ alternatives. In this capacity, I have become familiar with how TiO₂ is used, and qualified for use, in PPG product formulations.

4. I understand that on April 19, 2018, PPG's outside counsel received notice from Complaint Counsel and Respondents that they intend to use certain PPG documents that had been designated Confidential at the administrative hearing in this matter. Complaint Counsel identified eight documents. Respondents identified 38 documents.¹

5. I have reviewed the documents identified by Complaint Counsel and Respondents for use at trial. As the Director of Raw Material Purchasing for PPG, I am familiar with the information in these documents and its competitive significance to PPG. PPG is seeking full *in camera* treatment of 24 documents and partial *in camera* treatment of 9 documents because they contain especially sensitive and confidential business information and trade secrets. Based on my review of the documents, my knowledge of PPG's business, and my familiarity with the confidentiality protection afforded this type of information by PPG, I submit that disclosure of this information to the public, including to PPG's TiO₂ suppliers and competitors, will cause serious competitive harm to PPG.

¹ Respondents identify six of the same documents as Complaint Counsel. Two documents identified by Respondents were identified twice.

6. Each of these documents, which is described specifically herein, contains competitively sensitive, proprietary, and/or trade secret information about (a) PPG's pricing, volume, payterms, or supply negotiations with TiO₂ suppliers; (b) PPG's supply strategy for TiO₂, including specific initiatives PPG has taken to develop alternative sources of supply and TiO₂ substitutes; (c) proprietary and trade secret information about PPG's product formulas; and/or (d) proprietary and trade secret information about PPG's testing, analysis, and investment in developing new commercial products or applications, which because they are in the research and development phase, are not known to the public.

7. The foregoing information is material to PPG's business. PPG is one of the largest coatings manufacturers in the world, generating sales of about \$14 billion globally in 2016. TiO₂ is an essential raw material in most of PPG's coatings products. It is used in thousands of different coatings formulations for products ranging from house paint to automotive and industrial coatings. As a result, TiO₂ is one of the most significant raw materials that PPG purchases for use in its products.

8. Given its competitive significance, PPG takes great care to guard information relating to its TiO₂ pricing, volume, supply agreements, supply strategy, specifications, and coatings formulas from public disclosure. Within PPG, only a handful of PPG employees have access to this information. To ensure limited distribution within the company, PPG does not save this information on network drives or in other locations that are generally accessible to PPG employees. Nor does PPG make this information available to its suppliers or competitors or share this information with non-PPG personnel in the ordinary course of business.

9. PPG seeks full *in camera* treatment for a period of five years for the following documents.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.	Full or Partial Treatment
PX4032		07/27/17	PPG-TROX-00000954	PPG-TROX-00000956	Full
PX4120		10/14/16	PPG-TROX-00053432	PPG-TROX-00053432	Full
PX4124		2/6/18	PPG-TROX-00053702	PPG-TROX-00053702	Full
N/A		7/13/17	PPG-TROX-00000203	PPG-TROX-00000206	Full
N/A		1/26/18	PPG-TROX-00016457	PPG-TROX-00016459	Full
N/A		05/01/17	PPG-TROX-00029141	PPG-TROX-00029144	Full
N/A		03/26/17	PPG-TROX-00026390	PPG-TROX-00026401	Full
N/A		04/21/16	PPG-TROX-00036704	PPG-TROX-00036706	Full
N/A		06/26/16	PPG-TROX-00057181	PPG-TROX-00057183	Full
N/A		02/16/16	PPG-TROX-00069646	PPG-TROX-00069648	Full
N/A		09/12/16	PPG-TROX-00090903	PPG-TROX-00090907	Full
N/A		06/08/17	PPG-TROX-00063006	PPG-TROX-00063008	Full
N/A		8/16/16	PPG-TROX-00089341	PPG-TROX-00089351	Full
N/A		11/1/14	PPG-TROX-00072525	PPG-TROX-0007525	Full
N/A		1/26/17	PPG-TROX-00023212	PPG-TROX-00023215	Full

10. PX4032 (PPG-TROX-00000954) is a TiO₂ price summary, which contains detailed, quarterly information about the price, volume, and payterms PPG individually negotiated with TiO₂ suppliers by region. This information is among the most competitively sensitive information generated by PPG. Only a handful of PPG employees are allowed to see

this information, which includes a select number of employees in PPG's purchasing department and a small number of senior managers. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] To further protect the confidentiality of this information, PPG does not store this information on any network drive that is generally available to PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to its negotiating position with TiO2 suppliers if they knew PPG's price, volume, and payterms with other TiO2 suppliers. For example, a supplier may refuse to offer (or accept) a lower price, knowing that PPG paid a higher price to another TiO2 supplier. PPG's competitors (who also use TiO2 in the manufacture of their coatings products) could use this information to negotiate a better price or disrupt PPG's TiO2 supply by negotiating volume away from PPG. This latter concern is especially serious because the TiO2 market is tight, meaning that TiO2 supply is limited.

11. PX4120 (PPG-TROX-00053432) are slides describing PPG's volume commitment with a specific TiO2 supplier; PPG's typical TiO2 demand by quarter and supplier; and the terms of a rebate offer from a particular supplier, including estimated savings. It also describes PPG's strategy and decision-flow if it is unable to meet another volume commitment, including the monetary implications for certain business segments. As noted previously, PPG does not share this type of information beyond a small group of PPG employees. Nor does PPG store this information in a place that is generally accessible to PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to its negotiating position with TiO2 suppliers if they knew the terms of PPG's supply agreements with other TiO2 suppliers or had information about PPG's negotiating strategy. Public disclosure of this

information would also cause PPG serious competitive harm because PPG's competitors could use information about PPG's volume and estimated savings to calculate to estimate a key cost input to PPG's coatings which could result in a less competitive coatings offering. Competitors could also use this information to disrupt PPG's TiO₂ supply by negotiating volume away from PPG.

12. PX4124 (PPG-TROX-00053702) is a slide I prepared for PPG's operating committee, which shows PPG's business assessment of TiO₂ supply [REDACTED], including its market analysis and pricing from certain suppliers. This slide also describes PPG's ongoing negotiations with TiO₂ suppliers, including the proposed terms of certain supply agreements. As noted previously, PPG shares this type of information with only a small number of PPG employees. This slide, in particular, was shared only with the senior managers that sit on PPG's operating committee. PPG maintains this information in strict confidence because it would cause serious harm to PPG's negotiating position with TiO₂ suppliers if they were aware of PPG's volume, pricing, and negotiations with other TiO₂ suppliers. PPG's competitors could also use this information to better estimate a key cost input to PPG's coatings which could result in a less competitive coatings offering, or competitors could disrupt PPG's TiO₂ supply altogether by negotiating volume away from PPG.

13. PPG-TROX-00000203 is an email and spreadsheet describing the specific elements of PPG's TiO₂ supply strategy, including action items, the status of those efforts, and PPG's perceived likelihood of success. It also describes PPG's negotiating strategy with TiO₂ suppliers and the volume of TiO₂ PPG purchased by supplier and year. PPG shares information relating to its TiO₂ supply strategy with only a small number of PPG employees. It does not share this information with customers, competitors, or suppliers. Nor does it share this

information with non-PPG personnel in the ordinary course of business. PPG maintains this information in strict confidence because it would cause serious harm to its negotiating position with TiO₂ suppliers if they were aware of the specific elements of PPG's TiO₂ strategy and its perceived likelihood of success. Public disclosure of this information would also cause serious harm to PPG because its competitors are likely to use this information to free-ride on PPG's efforts and ideas to reduce or diversify TiO₂ supply or disrupt PPG's supply strategy. PPG's TiO₂ suppliers could use this information to harm PPG in negotiations by knowing PPG's potential alternatives for TiO₂ volume.

14. PPG-TROX-00016457 is an email and slide deck describing PPG's strategic efforts and ideas relating to its TiO₂ supply strategy, including specific initiatives and projects relating to [REDACTED]. As noted previously, PPG shares this type of information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to PPG if its competitors knew [REDACTED]. It would also cause serious harm to PPG's negotiating position with TiO₂ suppliers because it contains detailed information about PPG's supply strategy. For example, PPG may lose bargaining leverage to the extent a supplier knows the degree to which PPG can switch to another supplier or between types of TiO₂. Competitors may also use this information free-ride on PPG's efforts and ideas to reduce or diversify TiO₂ supply or disrupt PPG's supply strategy or to disrupt PPG's supply strategy.

15. PPG-TROX-00029141 is an email and slide deck describing PPG's supply agreements with a specific TiO₂ supplier, including the price, volume, and grade of TiO₂

covered by those agreements. It also describes PPG's negotiating strategy, including target and potential compromise positions for ongoing negotiations. As noted previously, PPG shares this type of information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to PPG's negotiating position with TiO₂ suppliers if they were aware of PPG's volume, pricing, and negotiations with other TiO₂ suppliers. For example, a supplier may refuse to offer (or accept) a lower price, knowing that PPG paid a higher price to another TiO₂ supplier. Public disclosure of this information would also cause serious harm to PPG because its competitors could use this information to estimate a key cost to PPG's coatings which could result in a less competitive coatings offering or to disrupt PPG's TiO₂ supply by negotiating volume away from PPG.

16. PPG-TROX-00026390 is an email and slide deck describing specific action items relating to PPG's TiO₂ supply agreements for 2018, including strategies for responding to TiO₂ supply shortages, proposed price increases, and the potential merger of Tronox and Cristal. As noted previously, PPG shares this type of information with only a small number of PPG employees. PPG maintains this information in strict confidence because disclosure of this information would cause serious harm to PPG's negotiating position with TiO₂ suppliers if they were aware of PPG's strategic initiatives relating to supply agreements, shortages, price inflation, and the proposed merger. For example, PPG may lose bargaining leverage to the extent a supplier knows the degree to which PPG can switch to another supplier. Public disclosure of this information would also cause serious harm to PPG because its competitors are likely to use this information to free-ride on PPG's efforts and ideas to reduce or diversify TiO₂, negotiate a better price for a key input material, or disrupt PPG's supply strategy by negotiating volume away from PPG.

17. PPG-TROX-00036704 and PPG-TROX-00057181 are duplicate copies of a slide deck describing PPG's TiO₂ supply strategy and qualification and use of an alternative TiO₂ supplier. It discusses highly confidential and proprietary information about PPG's plans to reformulate certain types of products and the specific TiO₂ grades it is considering for conversion. It also discusses PPG's current and potential purchase volume from specific TiO₂ suppliers. As noted previously, PPG shares this type of information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would be harmful to its negotiating position if TiO₂ suppliers were aware of the specific elements of its supply strategy, including PPG's potential alternatives for TiO₂ and PPG's plans for product reformulation. For example, PPG may lose bargaining leverage to the extent a supplier knows the degree to which PPG can switch to another supplier. It would also cause serious harm to PPG if this information were disclosed to PPG's competitors because they are likely to use this information to disrupt PPG's supply strategy by negotiating volume away from PPG.

18. PPG-TROX-00090903 is an email describing PPG's negotiations with a specific TiO₂ supplier, including price terms, volume, and duration of the supply agreement. It also describes PPG's business strategy relating to its use of TiO₂ from a specific supplier in certain business segments. As noted previously, PPG shares this type of information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would be harmful to its negotiating position if TiO₂ suppliers were aware of the specific terms of its supply agreements with other TiO₂ suppliers and PPG's potential use of alternative TiO₂ suppliers. For example, PPG may lose bargaining leverage to the extent a supplier knows the degree to which PPG can switch to another supplier. A supplier may also refuse to offer (or accept) a lower price, if they know PPG has accepted a higher price from another TiO₂ supplier.

PPG's competitors could also use this information to better estimate a key cost input to PPG's coatings which could result in a less competitive coatings offering, or competitors could disrupt PPG's TiO2 supply altogether by negotiating volume away from PPG.

19. PPG-TROX-00069646 is an email and slide describing PPG's strategic objectives and motivation for working with a specific TiO2 supplier as part of its ongoing supply strategy. This slide describes the specific ways in which PPG intends to work with that supplier to produce TiO2, [REDACTED]

[REDACTED]. PPG shares this information with only a small number of PPG employees. PPG has maintained this information in strict confidence because it would cause serious harm to PPG's negotiating position with TiO2 suppliers if they were aware of the specific elements of its supply strategy, including the PPG's potential alternatives for TiO2. For example, PPG may lose bargaining leverage to the extent a supplier knows the degree to which PPG can switch to another supplier. It would also cause serious harm to PPG if this information were disclosed to PPG's competitors, as they may use this information to free-ride on PPG's efforts and ideas to reduce or diversify TiO2 supply or disrupt PPG's supply strategy by negotiating volume away from PPG.

20. PPG-TROX-00063006 and PPG-TROX-00089341 discuss and attach the same internal slide deck,² which describes PPG's strategic objectives, estimated cost savings, technical milestones, target customers, strategic risks, projected purchase volume, pricing, and strategic

² PPG-TROX-00089341 also contains slides relating to PPG's research, testing, and development relating to [REDACTED]

[REDACTED]

[REDACTED] Accordingly, PPG requests permanent *in camera* treatment of the portion of this document bates numbered PPG-TROX-00089351.

path forward in connection with PPG's joint development arrangement with a specific TiO₂ supplier. As noted previously, PPG shares this information with only a small number of PPG employees. PPG further designated this document as "PPG Proprietary & Confidential Information" to indicate that it is proprietary and secret. PPG has maintained this information in strict confidence because it would cause serious harm to PPG's negotiating position with TiO₂ suppliers if they were aware of the specific elements of its supply strategy, including the PPG's potential alternatives for TiO₂. For example, PPG may lose bargaining leverage to the extent a supplier knows the degree to which PPG can switch to another supplier. It would also cause serious harm to PPG if this information were disclosed to PPG's competitors, as they may use this information to free-ride on PPG's efforts and ideas to reduce or diversify TiO₂ supply or disrupt PPG's supply strategy by negotiating volume away from PPG. While some of the information in this document is from before 2015, it is intermingled with more recent information as part of PPG's strategic analysis. Moreover, the information from before 2015 relates to pricing, volume, and PPG's supply strategy, which remain competitively significant. Disclosure of this information would cause PPG serious harm because TiO₂ suppliers can use volume and pricing information to back calculate PPG's price relative to the market, which can be used to PPG's disadvantage in current supply negotiations. Disclosure of this information would further cause PPG serious harm because it reveals current elements of PPG's supply strategy, which PPG's suppliers can use to harm PPG in negotiations. PPG's competitors can also use this information to disrupt PPG's supply strategy.

21. PPG-TROX-00072525 is an email and slide deck discussing competitively sensitive information about PPG's supply strategy for TiO₂, including its price terms and volume with certain suppliers, and PPG's efforts to reduce its use of TiO₂ and develop alternative

sources of supply. PPG further designated this document as “PPG Confidential Information” to indicate that it is proprietary and secret. As noted previously, PPG shares this information with only a small number of PPG employees. PPG maintains this information in strict confidence because disclosure of this information would also cause serious harm to PPG’s negotiating position with TiO₂ suppliers, as it reveals specific information about PPG’s efforts to develop alternative sources of supply. While this document is from 2014, disclosure of this information would still cause PPG competitive harm because it reveals information about ongoing supply strategies at PPG, including [REDACTED].

Moreover, the information in this document was compiled for purposes of proving a forward-looking strategic analysis for PPG’s TiO₂ supply. This information also remains sensitive, and disclosure would cause PPG competitive harm, because information about PPG’s volume and pricing can be used by TiO₂ suppliers to back calculate PPG’s price relative to the market, which can be used to PPG’s disadvantage in supply negotiations.

22. PPG-TROX-00023212 is an email and attachment containing PPG’s business impressions and analysis of the TiO₂ market and coatings industry. It also reveals PPG’s volume from a specific TiO₂ supplier. PPG shares these types of strategy documents with only a small number of PPG employees. PPG maintains this information in strict confidence because its disclosure could cause serious harm to PPG’s negotiating position with TiO₂ suppliers if they knew PPG’s volume from certain suppliers and/or ability to use alternative TiO₂ suppliers. PPG’s competitors could also use this information to disrupt PPG’s TiO₂ supply by negotiating volume away from TiO₂.

23. PPG seeks partial *in camera* treatment for a period of five years for the documents identified below.³

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.	Full or Partial Treatment
PX4079		07/28/17	PPG-TROX-00001422	PPG-TROX-00001424	Partial
PX4106		10/18/17	PPG-TROX-00008492	PPG-TROX-00008494	Partial
PX4113	Civil Investigative Demand Response	07/31/17	N/A	N/A	Partial
N/A	Civil Investigative Demand Response	07/31/17	PPG-TROX-00073597	PPG-TROX-00073613	Partial
PX7025	P. Malichky Deposition	0/16/18	N/A	N/A	Partial
PX8000	P. Malichky Declaration	10/6/17	N/A	N/A	Partial
N/A	P. Malichky Declaration	10/6/17	PPG-TROX-00073716	PPG-TROX-00073722	Partial
N/A		11/26/17	PPG-TROX-00011405	PPG-TROX-00011408	Partial
N/A		04/06/16	PPG-TROX-00035207	PPG-TROX-0005213	Partial

24. PX4079 (PPG-TROX-00001422) is an email and spreadsheet describing the price delta between Tronox and Cristal for TiO₂ and the total price increase PPG would pay if Tronox harmonizes its pricing with Cristal post-merger. This document also describes PPG's strategic assessment of a proposed supply agreement with a specific TiO₂ supplier, including the strategic pros and cons for PPG's business. As noted previously, PPG shares this type of information with only a small number of PPG employees. PPG has maintained this information in strict confidence because it would cause serious harm to PPG's negotiating position with TiO₂

³ For the Commission's convenience, PPG has identified the specific portions PPG seeks to redact in the exhibits attached to its Motion at Exhibit F.

suppliers, if they knew PPG's anticipated reactions to, and strategic concerns about, certain supply agreement proposals. It would also cause serious harm if the price delta and estimated cost referenced in this document were made available to the public, because it could be used by TiO₂ suppliers and competitors to calculate PPG's volume and price with Tronox and Cristal.

25. PX4106 (PPG-TROX-00008492) is an email describing PPG's specific quarterly production levels and demand for TiO₂ in its architectural coatings business. PPG's production information is generally shared with a limited number of PPG employees, including members of senior management and certain employees in manufacturing. PPG does not make this information available to its suppliers or competitors. Nor has PPG shared this information with non-PPG personnel in the ordinary course of business. PPG maintains this information in strict confidence because it would cause PPG serious competitive harm if it were disclosed to PPG's TiO₂ suppliers, who may use this information to plot out the market or coordinate on TiO₂ output.

26. PX4113 and PPG-TROX-00073597 are PPG's response to the CID it received from Complaint Counsel. PPG's response describes PPG's supply agreements with TiO₂ suppliers, including the price, volume, payterms, and PPG's negotiating strategy in response to proposed price increases from TiO₂ suppliers. PPG's response also describes the acquisitions through which PPG inherited TiO₂ supply contracts and PPG's business strategy and practices with respect to those agreements. As noted previously, PPG shares this information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to its negotiating position with TiO₂ suppliers if they knew PPG's price, volume, and payterms with other TiO₂ suppliers or had insight into PPG's negotiating strategy. For example, a TiO₂ supplier may refuse to offer (or accept) or lower price, if it had

information showing that PPG had accepted a higher price from another supplier. PPG's competitors could also use this information to better estimate a key cost input to PPG's coatings which could result in less competitive coatings offering, or competitors could also use this information to disrupt PPG's TiO₂ supply altogether by negotiating volume away from PPG. While this information contains some pricing and volume data from 2014, this information remains competitively sensitive, and its disclosure would continue to cause PPG serious competitive harm, because pricing and volume information can be used by TiO₂ suppliers to back calculate PPG's price relative to the market, which can be used to PPG's disadvantage in supply negotiations. Accordingly, PPG's TiO₂ suppliers and customers could still use this information for competitive advantage to map out the pricing cycle and assess PPG's negotiating leverage.

27. PX7025 is the transcript of my deposition in this matter. During my deposition, I was asked questions and gave answers on a number of competitively sensitive topics, including among other things, PPG's pricing with TiO₂ suppliers; PPG's price and volume negotiations with TiO₂ suppliers; PPG's supply agreements with TiO₂ suppliers; PPG's supply strategy with respect to certain TiO₂ suppliers; PPG's strategic thinking regarding whether to move TiO₂ across regions; the type of TiO₂ PPG uses at its manufacturing plants; PPG's proprietary and strategic reasons for using certain types of TiO₂; and PPG's strategic efforts to reduce or replace TiO₂ in its product formulations. I was also asked questions and gave testimony about the substance of some of the exhibits for which PPG is seeking *in camera* treatment, including PX4032, PX4079, PX4106, PX4120, PX4124, and PPG-TROX-00073716. As noted previously, PPG shares this information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to PPG's negotiating

position with TiO₂ suppliers if they were aware of PPG's pricing, volume, and priceterms with other TiO₂ suppliers. It would also cause serious harm to PPG's negotiating position with TiO₂ suppliers if they had information about PPG's pricing and volume with other TiO₂ suppliers and/or PPG's perceived viability of alternative TiO₂ suppliers or TiO₂ substitutes. For example, a TiO₂ supplier may refuse to offer (or accept) or lower price, if it had information showing that PPG had accepted a higher price from another supplier. PPG's competitors could also use this information to better estimate a key cost input to PPG's coatings which could result in less competitive coatings offering. Competitors could also use this information to free-ride on PPG's efforts and ideas to reduce or diversify TiO₂ supply or disrupt PPG's supply strategy.

28. PX8000 and PPG-TROX-00073716 are the declaration I submitted to Complaint Counsel in this matter. My declaration contains specific information about PPG's TiO₂ volume, pricing, and negotiating and supply strategy for TiO₂. My declaration also contains competitively sensitive and proprietary information about its product formulations, including which types of TiO₂ are qualified for use in its formulations and at its manufacturing facilities. As noted previously, PPG shares this information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to PPG's negotiating position with TiO₂ suppliers if they were aware of PPG's pricing, volume, and priceterms with other TiO₂ suppliers. It would also cause serious harm to PPG's negotiating position with TiO₂ suppliers if they had information about PPG's pricing and volume with other TiO₂ suppliers or PPG's perceived viability of alternative TiO₂ suppliers or substitutes. For example, a TiO₂ supplier may refuse to offer (or accept) or lower price, if it had information showing that PPG had accepted a higher price from another supplier. PPG's competitors could also use this information to better estimate a key cost input to PPG's coatings which could result

in less competitive coatings offering. Competitors could also use this information to free-ride on PPG's efforts and ideas to reduce or diversify TiO₂ supply or disrupt PPG's supply strategy.

29. PPG-TROX-00011405 is an email describing the terms of PPG's supply agreement with a specific TiO₂ supplier and ongoing negotiations with that supplier about the terms of a future supply agreement, including specific information about the volume and type of TiO₂ that would be covered under the agreement. It also describes PPG's negotiating strategy. As noted previously, PPG shares this information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would be harmful to its negotiating position with TiO₂ suppliers if they knew the specific terms of PPG's supply agreements with other TiO₂ suppliers and PPG's anticipated reactions to, and strategic concerns about, certain supply terms. PPG's competitors could also use this information to better estimate a key cost input to PPG's coatings which could result in less competitive coatings offering, or competitors could disrupt PPG's TiO₂ supply altogether by negotiating volume away from PPG. This information is especially sensitive as it relates to existing and ongoing contract negotiations for TiO₂.

30. PPG-TROX-00035207 is an email containing information about PPG's evaluation of TiO₂ samples from a specific supplier, including its anticipated purchase volume and potential price differential from other TiO₂ suppliers. It also describes PPG's supply agreement with that supplier, including the volume, price, and duration of the contract. As noted previously, PPG shares this information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would be harmful to its negotiating position with TiO₂ suppliers if they knew the specific terms of PPG's price and volume with another TiO₂ supplier. PPG's TiO₂ suppliers could use this information to harm PPG in negotiations by

knowing PPG's potential alternatives for TiO₂ volume. PPG would be further harmed if this information were disclosed to competitors, who may use this information to obtain a better price or disrupt PPG's supply by negotiating volume away from PPG. This information is especially sensitive as it relates to existing and ongoing contracts negotiations with a TiO₂ supplier.

31. PPG seeks full *in camera* treatment for an indefinite amount of time for the following documents.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.	Full or Partial Treatment
N/A		7/4/17	PPG-TROX-00032262	PPG-TROX-00032277	Full
N/A		6/29/16	PPG-TROX-00056635	PPG-TROX-00056639	Full
N/A		6/29/16	PPG-TROX-00056640	PPG-TROX-00056645	Full
N/A		1/13/16	PPG-TROX-00068456	PPG-TROX-00068462	Full
N/A		6/6/16	PPG-TROX-00073328	PPG-TROX-00073329	Full
N/A		9/29/17	PPG-TROX-00066915	PPG-TROX-00066932	Full
N/A		7/15/16	PPG-TROX-00071984	PPG-TROX-00071986	Full
N/A		12/14/17	PPG-TROX-00073841	PPG-TROX-00073844	Full
N/A		02/26/18	PPG-TROX-00097473	PPG-TROX-00097552	Full

32. PPG-TROX-00032262, PPG-TROX-00056635, PPG-TROX-00056640, PPG-TROX-00073328, and PPG-TROX-00068456 are documents containing proprietary and trade secret information about PPG's process for evaluating TiO₂; its supplier screening criteria; its

laboratory test results for TiO₂ tested in certain coatings formulas; the specific grades of TiO₂ used in PPG's product formulas; the products for which certain grades of TiO₂ are qualified; and confidential business impressions about the viability of certain suppliers. These documents also describe the objective, status, and path forward for PPG's testing of certain samples of TiO₂ as part of its TiO₂ supply strategy. PPG has devoted significant time and resources to developing its TiO₂ qualification process and product formulas, which represent substantial value to PPG, as PPG's product formulas are the primary basis on which PPG differentiates itself from other coatings manufactures. PPG does not disclose information about its internal qualification process or product formulas to customers, competitors, or suppliers. To protect the confidentiality of this information, PPG shares information on a highly restricted basis with only certain PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to PPG if this information were disclosed to PPG's competitors, who may use this information to reverse engineer PPG product formulations or disrupt PPG's supply of certain TiO₂ grades. Disclosure of this information to PPG's suppliers would also cause serious harm to PPG in supply negotiations. To the extent a supplier knew which of its grades were used in PPG's formulas, this would give the supplier more leverage, and the ability to better dictate price. The competitive significance of PPG's qualification process and production formulations are unlikely to decrease over time and thus, indefinite protection from disclosure is appropriate.

33. PPG-TROX-00066915 is an email and attachment containing PPG's monthly technical report on corporate funded research projects. This report describes proprietary and trade secret information about PPG's research and development of new commercial products and applications and PPG's technical research for specific customers. The information in this report is especially sensitive because it contains specific information about ongoing research and

development projects for new commercial products and applications that are unknown to the public or to PPG's customers, competitors, or suppliers. This information is material to PPG's business, and represents substantial value to PPG, as PPG invests substantial resources in researching, developing, and improving products to compete with other coatings manufactures. To protect the confidentiality of this information, PPG shares this type of information with a limited number of employees. The report is designated "PPG Proprietary & Confidential Information" and notes on the first page that it is "not to be reproduced, revealed to unauthorized persons or sent outside of PPG without proper approval." *See* PPG-TROX-00066918. PPG has maintained this information in strict confidence because it would cause serious harm to PPG if its competitors had information relating to its research and development efforts and new product concepts, as they may free-ride on PPG's research and development efforts, which PPG has taken great care to keep confidential. The competitive significance of the research described in this report is unlikely to decrease over time and thus, indefinite protection from disclosure is appropriate.

34. PPG-TROX-00071984 is an email and slide deck discussing proprietary and trade secret information about the research and development projects PPG undertook to try to develop an alternative to TiO₂. This document describes in detail the technical concepts PPG researched and evaluated, including the objectives, project status, testing, results, and path forward for specific research initiatives. This information is material to PPG's business, and represents substantial value to PPG. PPG has invested substantial resources in researching alternatives to TiO₂ as part of its TiO₂ supply strategy. To protect the confidentiality of this information, PPG shares this type of information with a limited number of employees. PPG also designated this material "PPG Industries, Inc. Confidential." PPG has maintained this information in strict

confidence because it would cause serious harm to PPG if its competitors had information relating to its research and development efforts relating to reducing or replacing TiO2. Disclosure of this information would also cause serious harm to PPG's negotiating position with TiO2 suppliers, who would use this information to assess PPG's bargaining leverage. The competitive significance of the research described in this report is unlikely to decrease over time and thus, indefinite protection from disclosure is appropriate. While the slide deck appears to be from before 2015, the technical concepts, testing, and research remain competitively sensitive, as PPG is currently revisiting some of the initiatives described in this document as part of its current supply strategy.

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] PPG has shared this information with only a small number of PPG employees. PPG has not made this information available to its suppliers or competitors. Nor has PPG shared this information, or any similar information, with non-PPG personnel in the ordinary course of business. PPG has maintained this information in strict confidence because it would be harmful to its negotiating position with TiO2 suppliers, [REDACTED]

[REDACTED]

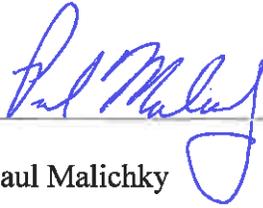
[REDACTED]

[REDACTED]

[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2018



Paul Malichky

EXHIBIT F

**DOCUMENTS MARKED CONFIDENTIAL IN
FULL OR PARTIALLY**

***IN CAMERA* TREATMENT REQUESTED**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May, 2018, I filed the foregoing documents electronically using the FTC's E-filing system, which will send notification of such filings to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Rm. H-113
Washington, DC 20580

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via electronic mail:

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Dated: May 1, 2018

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