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UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

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

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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:

J. Robert Robertson, Lisa D. Fialco
and Chong S. Park
Federal Trade Commission
Bureau of Competition
601 New Jersey Avenue, N.W., Drop 6264
Washington, D.C. 20001

14:05:12 1 that.

14:05:16 2 You have a very specific procedure as to
14:05:18 3 which comments need to be replied to; don't you?

14:05:22 4 A. Correct.

14:05:24 5 Q. And so, for instance, this being August of
14:05:26 6 1991, this letter was never responded to as part of
14:05:32 7 the formal rulemaking; was it?

14:05:36 8 A. If this was not part of the hearing record
14:05:40 9 and was not submitted within the 45-day period when
14:05:44 10 we send the staff report out, then it would not
14:05:47 11 have -- and unless he didn't put it into the record
14:05:49 12 at the hearing, it wouldn't have been responded to.

14:05:53 13 Q. Why is --

14:05:53 14 Do you have an understanding as to why you
14:05:55 15 have that procedure?

14:06:02 16 A. Well I think --

14:06:06 17 I do, but it's -- it's really -- I think
14:06:08 18 this is really a question, because it deals with our
14:06:12 19 responsibilities under the APA and so forth, and I
14:06:15 20 really think that's something that, you know, should
14:06:18 21 be addressed to one of our attorneys.

14:06:19 22 Q. Okay. Prior to the time that you met with
14:06:54 23 Unocal in June of 1991, Toyota had informed you that
14:07:02 24 they thought T50 reduced emissions; is that right?

14:07:07 25 A. That's correct.

14:07:08 1 Q. In fact they had told you that they
14:07:11 2 believed T50 reduced hydrocarbon emissions; correct?
14:07:14 3 A. That's correct.
14:07:21 4 Q. And they did that in April of 1991; is that
14:07:24 5 correct?
14:07:25 6 A. I believe that's -- that's correct.
14:07:30 7 Q. And they did that in a document to you --
14:07:32 8 A. Yes.
14:07:33 9 Q. -- at a meeting that you were present at.
14:07:36 10 A. I believe so.
14:07:40 11 Q. Was the document marked confidential, do
14:07:44 12 you recall?
14:07:48 13 A. I don't -- don't recall, but I don't --
14:07:54 14 Well if you have the document you can
14:07:57 15 refresh my memory.
14:07:59 16 Q. I'll try.
14:08:11 17 (Respondent's Exhibit 19 was
14:08:12 18 marked for identification.)
14:08:12 19 BY MR. BEEHLER:
14:08:17 20 Q. Looking at Respondent's Exhibit 19, do you
14:08:20 21 see it starts off with a letter to a couple of
14:08:24 22 lawyers, one which has a striking similarity to my
14:08:27 23 name -- a typo there -- from Jim Ryden of CARB. Do
14:08:34 24 you see that?
14:08:35 25 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?

14:13:18 24 A. Yes.

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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In the Matter of
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DEPOSITION OF PETER D. VENTURINI

VOLUME II, PAGES 285 - 545

May 14, 2003

(The following is the continued deposition
of PETER D. VENTURINI, taken pursuant to Notice of
Taking Deposition, via videotape, at the Hyatt
Regency Hotel, Sacramento, California, commencing at
approximately 9:03 o'clock a.m., May 14, 2003.)

APPEARANCES:

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11:56:30 1 taking in the Phase 3 regulations, and once again we
11:56:33 2 were concerned with, you know, facilitating
11:56:36 3 production and doing whatever we can to basically
11:56:41 4 make the regu -- compliance with these regulations as
11:56:45 5 flexible as possible to, you know, keep -- keep costs
11:56:49 6 down.

11:56:50 7 Q. Okay. I -- I understand, --

11:56:53 8 A. Yeah.

11:56:53 9 Q. -- but how does that reflect fraud or
11:56:55 10 deception by Unocal?

11:56:56 11 A. Well it's as I said earlier, it's the --
11:56:59 12 the whole emphasis that we had and to make clear that
11:57:04 13 costs were a very significant concern to us
11:57:07 14 throughout this whole process and why we really feel
11:57:11 15 we were really misled back in 1991, because we have
11:57:17 16 been very concerned about costs.

11:57:19 17 Q. September 29, 2000, it's five years after
11:57:24 18 you heard about the Unocal patent and in fact the
11:57:27 19 jury has already come back and awarded Unocal a
11:57:29 20 royalty and found infringement; right?

11:57:33 21 A. Correct.

11:57:34 22 Q. You didn't consider the Unocal patent as
11:57:36 23 part of these regulations; did you, sir?

11:57:39 24 A. Well at that -- that time it was my --

11:57:41 25 Q. Did you consider the Unocal patent as part

11:57:44 1 of the Phase 3 regulations?

11:57:47 2 A. No.

11:57:48 3 Q. Okay.

11:57:49 4 A. Can I explain --

11:57:50 5 Q. With the -- with the finding of

11:57:51 6 infringement and a royalty amount, you didn't

11:57:53 7 consider it. Why?

11:57:57 8 A. Basically because it was still in our view

11:57:59 9 in a state of flux; there was continuing litigation

11:58:02 10 and -- and issues.

11:58:04 11 Q. When you said it's in a state of flux, in

11:58:06 12 fact CARB took the position that the patent was not

11:58:09 13 valid; didn't they?

11:58:12 14 A. Yeah, we -- we believed that there were

11:58:15 15 concerns with the validity of the patent.

11:58:17 16 Q. Right. In fact you came to testify in

11:58:20 17 connection with the refiners as a witness to convince

11:58:25 18 the jury that the patent was not valid; didn't you?

11:58:29 19 A. Yes.

11:58:29 20 Q. And CARB itself, through its counsel,

11:58:34 21 including outside counsel, took positions before the

11:58:39 22 United States Supreme Court attempting to convince

11:58:42 23 them to hold the patent invalid; correct?

11:58:47 24 MR. ROBERTSON: Objection, foundation.

11:58:49 25 Q. Correct?

11:58:51 1 A. I -- I -- I presume so, yeah. There was a
11:58:53 2 lot of activity.

11:58:54 3 Q. You know they did that. You know that they
11:58:56 4 filed briefs asking the U.S. Supreme Court to do
11:58:59 5 that.

11:59:00 6 A. In all honesty, I don't recall. We
11:59:02 7 probably did.

11:59:03 8 Q. Okay.

11:59:03 9 A. But I'm just being honest. If I'm not
11:59:06 10 certain, I will just tell you I don't -- don't
11:59:08 11 recall.

11:59:09 12 Q. And it was because of that belief of, as
11:59:10 13 you said, "in flux," but perhaps let's -- let's --
11:59:14 14 let's call it for what it is, was it a belief that
11:59:17 15 the patent was invalid that you decided not to
11:59:19 16 consider the cost for your Phase 3 regulations?

11:59:30 17 A. No, I don't -- I don't think so. I think
11:59:30 18 the basic reason is it was still in litigation, there
11:59:31 19 were activities going on in terms of litigation, so
11:59:33 20 nothing had been finalized.

11:59:34 21 Q. So you wanted to make sure that there was a
11:59:37 22 final determination of validity before -- and
11:59:42 23 infringement before you considered the cost; is that
11:59:46 24 right? Am I right?

11:59:47 25 A. Could you repeat the question, please?

11:59:49 1 Q. You wanted to make sure that there was a
11:59:51 2 final determination of validity and infringement
11:59:53 3 before you considered the cost as part of your
11:59:55 4 regulation; right?

11:59:58 5 A. I don't know if that's exactly -- exactly
12:00:00 6 correct. Keep in mind what we were doing here was
12:00:02 7 looking at the Phase 3 regulations that were over and
12:00:07 8 above the other regulations that we had done, and we
12:00:10 9 were looking at the impact of this -- this
12:00:12 10 regulation.

12:00:13 11 Q. You just testified that, quote, "I think
12:00:15 12 the basic reason is it was still in litigation, there
12:00:19 13 were activities going on in terms of litigation, so
12:00:21 14 nothing had been finalized." Do you remember that?

12:00:24 15 A. Yes.

12:00:24 16 Q. Okay.

12:00:24 17 A. I said that.

12:00:25 18 Q. And nothing had been finalized in terms of
12:00:28 19 infringement or validity. That's what you meant;
12:00:32 20 correct?

12:00:32 21 A. Or the outcome of the -- of the patent
12:00:34 22 issue.

12:00:35 23 Q. And it is that reason that you did not
12:00:36 24 consider the cost for Phase 3 regulations; --

12:00:40 25 MR. ROBERTSON: Objection.

12:00:40 1 Q. -- right?

12:00:41 2 MR. ROBERTSON: Asked and answered.

12:00:42 3 A. I -- I think I answered your question, sir.

12:00:44 4 Q. Isn't that the reason you --

12:00:45 5 Because that was not finalized, that's why

12:00:48 6 you didn't consider it for your Phase 3 regulations.

12:00:52 7 MR. ROBERTSON: Objection, asked and

12:00:52 8 answered. You're badgering the witness.

12:00:54 9 MR. BEEHLER: Go ahead.

12:00:55 10 A. Well I think I did answer the question.

12:00:57 11 I'll answer again. It's because there was still

12:01:00 12 ongoing litigation and legal -- legal proceedings in

12:01:03 13 process.

12:01:04 14 Q. Okay. Anything else on that exhibit?

12:01:06 15 A. No.

12:01:10 16 Q. And then we go back to Exhibit 51, sir.

12:01:14 17 A. Okay. I think this one will be real quick.

12:01:17 18 Q. And is there anything in addition here that

12:01:18 19 you would like to add? This is, just to identify it,

12:01:21 20 the proposed amendments to the California Phase 3

12:01:24 21 reformulated gasoline regulations, the initial

12:01:27 22 statement of reasons; right?

12:01:29 23 A. Correct. I -- I just included this because

12:01:32 24 I wanted to have available this table --

12:01:35 25 Q. On page --

15:41:07 1 the story, basically that, oh, by the way, they have
15:41:10 2 a patent and so forth, and as I characterized
15:41:14 3 earlier, that there were some strings attached.

15:41:17 4 Q. Can we go back to my question though?

15:41:19 5 A. Yes.

15:41:21 6 Q. If Unocal had said "not confidential" in
15:41:25 7 that letter instead of "non-proprietary," you would
15:41:27 8 have used the information, the equations, the data,
15:41:33 9 the presentation slides as you actually did.

15:41:38 10 A. Correct.

15:41:38 11 Q. Okay. If Unocal had said to CARB staff we
15:41:50 12 have a pending application, but not giving you any
15:41:55 13 more information, what would you have done?

15:42:02 14 A. If Unocal had told us there was a pending
15:42:05 15 patent application, I think the outcome would have
15:42:09 16 been no regulation.

15:42:12 17 Q. Okay.

15:42:12 18 A. We think the outcome would have been no
15:42:14 19 regulation.

15:42:15 20 Q. Let's make sure that you understand and are
15:42:18 21 being very specific in response --

15:42:20 22 A. Yes.

15:42:21 23 Q. -- to my question. Okay? If Unocal had
15:42:24 24 said that they had a pending application but nothing
15:42:29 25 more, what would you have done?

15:42:35 1 A. I think I answered that. We would not have
15:42:37 2 had a Phase 2 regulation in November.

15:42:43 3 Q. Without seeing the Unocal pending
15:42:46 4 application, you would have not had any regulations
15:42:53 5 at all?

15:42:54 6 A. In November, that's correct.

15:42:59 7 Q. Weren't you bound by the Clean Air Act to
15:43:01 8 come up with regulations by the end of 1991?

15:43:04 9 A. We also had to consider cost effectiveness
15:43:07 10 in -- in whatever we do.

15:43:09 11 Q. Okay. I'm -- I'm just asking this
15:43:12 12 question: Didn't you understand that you were bound
15:43:14 13 by the Clean Air Act, the California Clean Air Act,
15:43:18 14 to come up with regulations by the end of 1991?

15:43:22 15 MR. ROBERTSON: Objection, misleading.

15:43:32 16 A. Well the act may have directed us, but that
15:43:32 17 doesn't mean that you just forget any information and
15:43:32 18 just proceed ahead.

15:43:34 19 Q. I'm just trying to understand.

15:43:37 20 A. I mean the act has a lot of requirements in
15:43:39 21 it.

15:43:40 22 Q. Yeah. Weren't you supposed to propose
15:43:42 23 regulations by the end of 1991?

15:43:48 24 A. If that's in the act, yes. But I'm telling
15:43:52 25 you if Unocal had told us they had a patent applied

15:43:56 1 for, we would not have taken that regulation to the
15:44:00 2 board. I'm very confident about that.

15:44:02 3 Q. Without knowing what the patent even
15:44:04 4 attempted to claim.

15:44:06 5 A. That makes it even more reason not to go to
15:44:09 6 the board.

15:44:14 7 Q. And how long would you have not gone to the
15:44:15 8 board?

15:44:22 9 A. That's really difficult to answer at this
15:44:24 10 point, but I'm quite certain we would not have taken
15:44:28 11 a regulation to the board.

15:44:30 12 Q. You would have never approved a regulation?

15:44:34 13 A. What we may have --

15:44:34 14 The only other thing I could -- that I'm
15:44:37 15 confident we may have done was just taken the EPA
15:44:40 16 regulation, but that's the only thing that I felt we
15:44:45 17 would have had an op -- we would have had an option
15:44:47 18 for at that time.

15:44:50 19 Q. Look at final statement of reasons 318,
15:45:03 20 would you?

15:45:03 21 A. 318?

15:45:04 22 Q. Yes. It's on page 172.

15:45:10 23 A. Thank you. 172.

15:45:16 24 Q. Wickland Oil specifically asked you to
15:45:18 25 adopt the EPA negotiated rulemaking; didn't they?