

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON D.C.

In the Matter of

Docket No. 9305

UNION OIL COMPANY OF CALIFORNIA,
a corporation.

**UNOCAL'S RESPONSE TO COMPLAINT COUNSEL'S
REQUEST FOR TRIAL SETTING**

Union Oil Company of California ("Unocal") respectfully submits this Response to Complaint Counsel's Request for Trial Setting ("Request") in order to clarify statements made by Complaint Counsel and to inform the Court of scheduling issues affecting Unocal's trial counsel.

In their Request, Complaint Counsel ask that Your Honor set a hearing date for September 20, 2004, or shortly thereafter. Although Complaint Counsel imply that the proposed hearing date was the reason Unocal would not consent to this Request,¹ in fact, Unocal does not oppose Your Honor's scheduling of a hearing on September 20th. Rather, Unocal declined to join Complaint Counsel's request for two reasons, both of which were conveyed to Counsel Chong Park. First, Unocal's counsel believed it was inappropriate for the lawyers in the case to direct the Court as to when the hearing should take place. Second, Unocal counsel expressed concern over the predicted length of Complaint Counsel's case-in-chief, given potential conflicts with other trials.

¹ Complaint Counsel represent that the parties have "met and conferred . . . concerning a proposed hearing date, but did not reach agreement." Request at 2. As noted above, this statement incorrectly portrays Unocal's position.

In that regard, Unocal needs to respond to Complaint Counsel's representation that "Counsel for the Respondent initially proposed that a hearing in this case commence in mid to late August, but subsequently reconsidered this position." Request at 2. Three of Unocal's trial attorneys, Martin R. Lueck, David W. Beehler, and Diane L. Simerson, are currently scheduled to be in trial in a patent infringement matter beginning October 25, 2004, in the District Court for the Eastern District of Missouri. Shortly after receiving the FTC's Order, Unocal informed Complaint Counsel of this and discussed whether Complaint Counsel would be available for an expedited August trial. The day after this discussion, the federal judge in the patent infringement matter recused herself, and the case was reassigned. While the trial is still scheduled for October, the judge's recusal may mean that this date will not hold. Upon learning that the October trial may be delayed, Unocal's counsel spoke with Mr. Park and informed him that Unocal was awaiting additional information regarding the Missouri trial before deciding whether to seek a scheduling conference with Your Honor.

Unocal would also like to inform Your Honor of two additional scheduling considerations. First, Unocal's lead trial counsel, Mr. Lueck, who was also lead counsel in the underlying litigation involving Unocal's patent, is scheduled to begin an arbitration, as lead counsel, for a separate client beginning on November 8, 2004 and concluding on November 23, 2004 in Washington D.C. If the Unocal hearing proceeds on September 20th, and goes as long as Complaint Counsel have suggested, it may be necessary for Unocal to request a continuance until after the completion of Mr. Lueck's previously scheduled arbitration.² Second, Unocal's trial team has been diligently inquiring about potential hotel accommodations for this September

² Also, should the October trial go forward as scheduled, Unocal would need an additional continuance.

through November, but on this short notice, has already been told by two hotels that they have no available accommodations.

Finally, while Unocal has no objection to the September 20th date, it does have concerns about the length of the trial and Complaint Counsel's claim that they need to call 60 witnesses to prove this purportedly straightforward "fraud" case. Unocal believes the hearing could take place in a much shorter time, and proposes, as is the practice in many courts, the imposition of time limits on the presentation of evidence by each side. Unocal believes that the imposition of time limits would most effectively alleviate the Commission's concerns about delay.

Dated: July 19, 2004.

Respectfully submitted,

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

By Original Signature on File with Commission

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ATTORNEYS FOR UNION OIL COMPANY OF
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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2004, I caused the original and two paper copies to be delivered for filing via Federal Express, and caused an electronic copy to be delivered for filing via e-mail of (1) Unocal's Response to Complaint Counsel's Request for Trial Setting and (2) Notice of Removal of Counsel 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 July 19, 2004, I also caused two paper copies of (1) Unocal's Response to Complaint Counsel's Request for Trial Setting (2) Notice of Removal of Counsel to be delivered via Federal Express to:

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

I hereby certify that on July 19, 2004, I also caused one paper copy of (1) Unocal's Response to Complaint Counsel's Request for Trial Setting and (2) Notice of Removal of Counsel to be served upon each person listed below via overnight delivery (Federal Express):

Chong S. Park, Esq.
Bureau of Competition
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Bethany D. Krueger