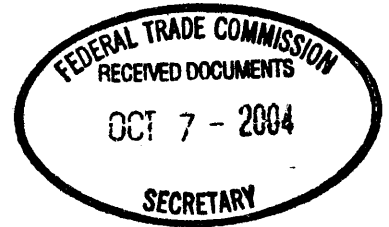


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
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UNION OIL COMPANY OF)
CALIFORNIA,)
Respondent.)

) Docket No. 9305
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ORDER ON RESPONDENT'S MOTIONS FOR *IN CAMERA* TREATMENT

I.

On October 10, 2003, Union Oil Company of California ("Respondent" or "Unocal") filed motions seeking *in camera* treatment for confidential personnel documents and confidential business documents. On October 29, 2003, Respondent filed a motion for leave to add two documents to its prior motion seeking *in camera* treatment of confidential business documents. The motion for leave to add two additional documents is GRANTED.

On October 10, 2003, three non-parties filed motions in support of Respondent's motion seeking *in camera* treatment for confidential business documents. No opposition to Respondent's motions has been filed.

II.

Respondent's motions provide declarations of Charles Strathman, Vice President, Law, of Union Oil Company of California ("Strathman Declarations"). Respondent seeks *in camera* treatment for an indefinite period for personnel information, for a period of eleven years for license information, and for a period of five years for business documents.

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those “unusual” cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1990 FTC LEXIS 364 (Oct. 17, 1990). Examples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135 (Apr. 26, 1991). Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales documents, it is typically extended for two to five years. *E.g.*, *In re E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981); *In re Int’l Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298 (June 26, 1996).

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission’s work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public’s purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *See DuPont*, 1990 FTC LEXIS 134, at *2. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant’s business that disclosure would result in serious competitive injury is required. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). The parties and non-parties have been advised of this requirement. Protective Order, ¶ 13. Requests for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard.

III.

A.

The personnel information for which Unocal seeks indefinite *in camera* treatment includes employee resumes, performance evaluations, personnel files, stock options, incentive awards, and financial information. As described by the Strathman Declaration, the documents for which *in camera* treatment is sought are solely for internal use and have limited distribution and accessibility within Unocal. Respondent argues that public understanding of this proceeding does not depend on these personnel documents and that this information will remain sensitive and confidential over time.

A review of the declaration in support of the motion and the documents reveals that some of the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Respondent's motion seeking *in camera* treatment for confidential personnel documents is GRANTED in part and DENIED in part. *In camera* treatment, for an indefinite period, is granted to:

CX 516, CX 510, CX 554, CX 452, CX 100, CX 353, CX 549,
CX 691, CX 546, CX 547, CX 569, CX 548, CX 555, CX 556,
CX 558, CX 562, CX 559, CX 567, CX 568, CX 712, CX 1575,
CX 1576, and CX 1577.

In camera treatment is not extended to the resumes of Michael C. Croudace (CX 451) and Peter J. Jessup (CX 450). Home phone numbers and addresses may be redacted from these exhibits.

It is anticipated that the relevance of these documents containing personnel information will be demonstrated if they are offered into evidence in this proceeding.

B.

The business documents and deposition testimony for which Unocal seeks *in camera* treatment for a period of eleven years include patent licensing agreements, license royalty calculations, schedules and strategies, confidential communications with licensees and potential licensees including for the purpose of settlement, and selected deposition testimony on these topics. As described by the Strathman Declaration, the documents for which *in camera* treatment is sought contain extremely sensitive commercial, financial, and trade secret information pertaining to licensing; price and cost calculations; and confidential correspondence between Unocal and its potential and current licensees. According to the Strathman Declaration, the last patent covered by these agreements expires in 2014.

Three non-parties filed motions supporting Respondent's motion for *in camera* treatment of information related to license agreements and indicated that the terms of the agreements and, in two cases, the identity of the parties are maintained in confidence. The non-parties argued that they would suffer material injury if this information were disclosed to the public.

A review of the declaration in support of Respondent's motion, the non-party motions, the excerpts of the deposition testimony, and the documents reveals that most of the information sought to be protected meets the standards for *in camera* treatment. Only certain sections of Respondent's responses to interrogatories qualify for *in camera* treatment and this Order is limited to those sections. Accordingly, Respondent's motion seeking *in camera* treatment for confidential license documents is GRANTED in part and DENIED in part. *In camera* treatment, to expire on January 1, 2015, is granted to:

CX 2018/RX 779; CX 2019/RX 780; CX 2017/RX 778; CX 2013/RX 776; CX 2011/RX 773; CX 2009/RX 774; CX 2014/RX 777; CX 2012/RX 775; CX 2020/RX 781; CX 1271; CX 2193; CX 2194; CX 2195; CX 2196; CX 2197; CX 2198; CX 2199; CX 2200; CX 684; CX 683; CX 707; CX 531; CX 458; CX 466; CX 2207; CX 2016; CX 2022; CX 2021; CX 473; CX 535; CX 533; CX 443; CX 444; CX 528; CX 2007; CX 2010; CX 2008; CX 2015; CX 2025, CX 2000, and CX 1345-002, answer to interrogatory no. 8, CX 1345-003 to 4, answer to interrogatory no. 9, and CX 1345-029 (attachment A).

In camera treatment, to expire on January 1, 2015, is granted to the deposition testimony of:

Jenkins (07/30/03) pp. 36:18 - 37:25
Jessup (06/11/03) pp. 131:7 - 132:17
Lamb (06/13/03) p. 7:16 - 7:23; p. 22:9 - 22:20; p. 23:2 - 23:23
Lane (06/18/03) pp. 49:1 - 49:10
Light (04/25/03) pp. 13:5 - 14:16; pp. 25:16 - 26:15; p. 38:17 - 38:21; pp. 46:13 - 52:8; pp. 63:4 - 64:8
Schmale (06/27/03) p. 6:1 to 6:2; pp. 77:3 - 78:21; pp. 81:24 - 82:17
Strathman (04/22/03) Vol. 1: pp. 8:17 - 47:10; pp. 48:19 - 103:6; pp. 105:19 - 116:10; pp. 118:6 - 119:13; pp. 121:5 - 184:16; Vol. 2: pp. 40:21 - 43:38
Strathman (06/06/03) pp. 91:22 - 93:9; pp. 94:22 - 96:15; pp. 99:19 - 115:12; pp. 117:10 - 124:2; pp. 130:5 - 132:10; pp. 161:13 - 162:8
Thacher (06/10/03) pp. 84:4 - 91:7
Thurman (06/23/03) pp. 11:19 - 12:13; pp. 18:17 - 19:13; pp. 21:14 - 22:16
Wirzbicki (06/04/03) pp. 8:22 - 10:9

In camera treatment is not extended to the sections of Respondent's answers to interrogatories not listed above.

C.

The business documents for which Unocal seeks *in camera* treatment for a period of five years include internal company policies, financial and tax information, and documents related to the Unocal/Tosco sale. As generally described by the Strathman Declaration, the internal company policies reveal important details and provide insight into how Unocal functions as a successful business, including information regarding business strategies, risk analyses, and products in development and/or in the pipeline. A review of the documents discloses that they include selected board meeting minutes from 1995-2001 and email and record retention policies and guidelines that appear to have been intended for general circulation within Unocal. As generally described in the Strathman Declaration, the financial and tax information contains financial terms with respect to licensing arrangements and negotiating positions and tax strategies of Unocal. A review of the documents, many of which are more than three years old,


also indicates that a number of the documents do not contain information related to licensing, but rather appear to be information that is publicly available. The Strathman Declaration does not specify which information in each document qualifies for *in camera* treatment. In addition, the Strathman Declaration does not sufficiently explain why confidentiality of the 1996 Unocal/Tosco sale should be granted until 2009.

Respondent has not demonstrated that the significant number of business documents for which it seeks *in camera* treatment for five years warrant such treatment. However, in order to prevent public disclosure of documents that may legitimately qualify for *in camera* status, the motion seeking *in camera* treatment for business documents is DENIED WITHOUT PREJUDICE. Should Respondent decide to refile its motion for *in camera* treatment of these business documents, the motion shall be filed by 10 a.m. EDT on October 12, 2004. Such a motion shall be limited to documents and information which qualify for *in camera* treatment. In addition, the motion shall contain a declaration or affidavit providing support for the motion and a copy of each document for which *in camera* treatment is sought.

IV.

Respondent shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: October 7, 2004