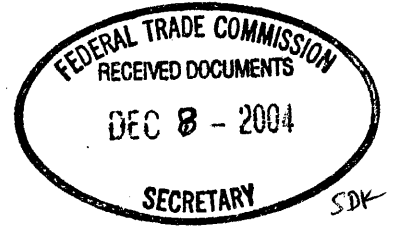


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)

UNION OIL COMPANY OF)
CALIFORNIA,)
Respondent.)
_____)

Docket No. 9305

**ORDER GRANTING NON-PARTY EXXONMOBIL'S MOTION FOR *IN CAMERA*
TREATMENT OF TRIAL TESTIMONY OF THOMAS EIZEMBER**

I.

Pursuant to Commission Rule 3.45, non-party ExxonMobil Corporation ("ExxonMobil"), on November 29, 2004, filed a motion seeking *in camera* treatment for the November 18, 2004 trial testimony of Thomas Eizember found in the trial transcript at Volume 18, Part 2, pages 3567-85 ("Motion"). ExxonMobil represents that the parties do not oppose ExxonMobil's Motion. Motion at 5. This testimony occurred during a previously designated *in camera* session.

II.

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, 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, at *6-7 (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, at *3 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135, at *1 (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*, 97 F.T.C. at 117. 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.

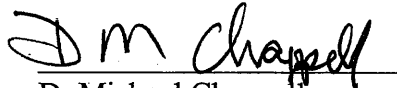
Non-party ExxonMobil moves for *in camera* treatment of the November 18, 2004 trial testimony regarding instructions that have been given relating to avoidance of the numerical property limitations of the Unocal patents. Motion at 2. ExxonMobil seeks *in camera* treatment for a period of five years. Motion at 5.

ExxonMobil's Motion provides a declaration of Thomas Eizember, Senior Planning Advisor in the Corporate Planning Department for ExxonMobil (“Eizember Declaration”). As described by the Eizember Declaration, the testimony for which *in camera* treatment is sought contains confidential information and disclosure of this information could cause real and serious damage to the competitive position of ExxonMobil.

A review of the testimony and the declaration in support of the Motion reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly,

ExxonMobil's Motion is GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to the trial testimony of Thomas Eizember found in the trial transcript at Volume 18, Part 2, pages 3567-85.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: December 8, 2004