

**COMPLAINT COUNSEL’S
PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

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	d.	Having the Following Properties:	-420-
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b.	CARB Expected That Outside Parties, When Urging CARB to Incorporate Research in the Phase 2 Regulations, Would Not Deceive CARB.	-530-
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b.	Unocal Believed and Stated Publicly That CARB Was under a Duty to Preserve Competition and a “Level Playing Field.”	-537-
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e.	Unocal’s Letters, Taken Together, Conveyed the Message That Unocal Would Give up “Competitive Advantage” If CARB Agreed to Consider a Predictive Model.	-557-
f.	CARB Staff Reasonably Understood Unocal’s Communications To Mean That There Were No Associated Costs with Use of Unocal’s Research.	-558-
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	1. There Were Other Options Available to Refiner Members That Would Have Mitigated Unocal’s Market Power Had Refiners Timely Been Informed of the Unocal Patents.	-566-
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	1. The Proper But-For World Is The One Where Unocal Makes Good On Its Zero Royalty Representation.	-572-
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	1. CARB Did Not Know it Was Taking Action Facilitating Unocal’s Exercise of Market Power.	-575-
	2. CARB Decision Makers Would Not Have Approved a Reformulated Gasoline Regulation Giving Unocal Substantial Market Power, But For Unocal’s Misrepresentations About its Patent Rights and Plans to Charge for Use of its Technology.	-576-

a.	CARB Decision Makers Would Not Have Approved the Versions of the Phase 2 Rule That Staff Proposed in October and November 1991.	-576-
b.	The Executive Officer of CARB Would Not Have Approved the Reformulated Gasoline Regulation Proposal Had He Known of Unocal's Plans to Enforce Its Proprietary Interests in Its 5/14 Research.	-578-
c.	CARB's General Counsel Would Not Have Approved Phase 2 RFG Regulations as Adopted Had he Known of Unocal's Pending Patents.	-579-
d.	CARB's Chairman and the CARB Board Would Not Have Approved a Reformulated Gasoline Regulation, As Actually Adopted in November 1991, Knowing That the Reformulated Gasoline it Mandated Potentially Overlapped with a Pending Unocal Patent.	-579-
e.	CARB's Executive Officer Would Have Prevented the Phase 2 Reformulated Gasoline Regulations as Approved, from Being Formally Adopted in September 1992.	-581-
f.	The Views of CARB's Decision Makers Are Entirely Consistent with CARB's Contemporaneous Actions to Avoid Excessive Cost and Adverse Impacts on Competition.	-582-
3.	CARB Had Other Alternatives Than Adopting the Reformulated Gasoline Regulations It Actually Adopted in November 1991.	-582-
a.	CARB Management Had the Option of Delaying the Phase 2 Proceeding to Consider Alternatives.	-582-
b.	CARB Could Have Adopted Other Specifications That Avoided Overlap with Unocal's Patents.	-583-
c.	EPA's RFG Regulations Would Have Achieved Significant Emissions Reductions in California.	-584-
d.	Neither CARB nor Unocal Believed That CARB, to Satisfy the California Clean Air Act, Had No Choice But to Issue Phase 2 as Actually Adopted.	-586-
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	1. Refiners Would Have Informed CARB of the Potential Cost of the CARB Regulations.	-591-
	2. Refiners Would Have Altered Their Investment Plans, Which Would Have Led CARB to Take Action.	-592-
	a. Refiners Would Have Delayed, Limited or Cancelled Investments in Modifications to Make CARB Phase 2-Compliant Gasoline.	-593-
	i. ARCO	-593-
	ii. Chevron	-595-
	iii. Exxon	-599-
	iv. Shell	-604-
	v. Texaco	-607-
	b. Dr. Teece’s Criticisms of Refiners’ Decisions as Not Realistic Is Misplaced.	-609-
	c. As a Matter of Course, the Refiners Would Have Informed CARB of Their Decisions Not to Invest.	-610-
	d. If Refiners Did Not Invest in CARB Phase 2 Capability, the Supply of CARB-Compliant Gasoline Would Have Been Greatly Reduced, and the Price of Gasoline in California Would Have Increased Substantially.	-611-
	3. Refiners Could Have Implemented Alternative Refinery Modifications That Would Have Helped to Minimize Infringement of Unocal’s Patents, Reducing Unocal’s Market Power. . . .	-613-
	a. ARCO’s Carson Refinery.	-616-
	b. Chevron’s El Segundo Refinery.	-617-
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	d. Exxon’s Benicia Refinery.	-619-
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A.	Unocal’s Deception Has Harmed the Consumers in the Technology	

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