

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
UNION OIL COMPANY OF CALIFORNIA,)	Docket No. 9305
)	
a corporation.)	
)	

**NON-PARTY EXXONMOBIL’S SECOND MOTION FOR *IN CAMERA* TREATMENT
OF HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL AND UNION
OIL COMPANY OF CALIFORNIA**

Non-party ExxonMobil Inc. (“ExxonMobil”) moves for an order directing *in camera* treatment of 20 exhibits – two supplemental documents that Union Oil Company of California (“Unocal”) has designated, and 17 documents and five excerpts from one deposition transcript that Complaint Counsel has designated for possible introduction at the hearing scheduled to begin on December 16, 2003.

On September 24, 2003, Complaint Counsel notified ExxonMobil of 154 exhibits on the FTC’s exhibit list that potentially contain sensitive information belonging to ExxonMobil. On October 14, 2003, Unocal supplemented its earlier notification with 27 additional exhibits from the ExxonMobil subpoena production in this matter.¹ On October 23, 2003, Complaint Counsel added one item from the subpoena production to its exhibit list. ExxonMobil has identified 20 exhibits from these lists for *in camera* protection. Public disclosure of any of these exhibits is likely to cause direct, serious harm to ExxonMobil’s competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(g), ExxonMobil respectfully moves for *in camera* treatment of its

¹ By motion filed October 20, 2003, ExxonMobil sought *in camera* protection for certain documents identified by Unocal in its first notice letter, dated September 26, 2003.

confidential business documents identified in the Declaration in support of this Motion, and attached thereto as Exhibits A-T.

**EXXONMOBIL'S CONFIDENTIAL INFORMATION DESERVES *IN CAMERA*
TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S
RULES OF PRACTICE**

ExxonMobil is not a party to this proceeding. The information in Exhibits A-T is fundamental to ExxonMobil's current gasoline refining operations, particularly its refinery in Torrance, California. ExxonMobil has guarded the confidentiality of these documents and deposition testimony carefully. Public disclosure of these materials could result in serious competitive injury to ExxonMobil, while adding very little incremental value to the public's understanding of the issues in this proceeding. Accordingly, Exhibits A-T merit *in camera* treatment. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999).

A. ExxonMobil Has Preserved The Confidentiality Of Its Materials

ExxonMobil has taken significant steps to protect the confidential nature of each Exhibit for which it seeks protection. These Exhibits were provided to Unocal only under compulsory process in this matter. ExxonMobil designated its materials "Confidential" or "Restricted Confidential – Attorney Eyes Only" under the Protective Order and pursuant to an agreement between ExxonMobil and several other non-party refiners on the one hand and Complaint Counsel and Unocal on the other. That agreement was designed to expedite discovery while ensuring that materials produced by the non-party refiners would receive sufficient protection from disclosure to competitors. It permits a refiner to invoke the higher level of protection ("Restricted Confidential – Attorney Eyes Only") under the Protective Order in the event the FTC or Unocal should decide that it wants to show that refiner's information to a witness who is

an employee of a competitor. These efforts show that ExxonMobil has preserved the confidentiality of its sensitive materials.²

B. Disclosure Of The Information In Exhibits A-T Could Result In Serious Competitive Injury To ExxonMobil

The information for which ExxonMobil seeks *in camera* treatment has direct and tangible impact on its day-to-day refining activities and its overall competitive position. As explained in the attached Declaration, Exhibits A-J are protocols, proposals and petitions presented in confidence to CARB regarding certification of on-line analyzer technology at the Benicia or Torrance Refineries. The information contained in all of these Exhibits was developed with significant investment of business and technical resources by numerous people in the ExxonMobil organization and its predecessors. As described in the Declaration, disclosure of internal production methods used when blending gasoline or using on-line certification and the business advantages that on-line certification would confer could damage ExxonMobil's competitive position.

Exhibits K-N are internal business planning documents relating to research, development and/or deployment of on-line certification technology and/or blending to avoid the numerical properties of the Unocal patent claims at the Benicia or Torrance Refineries. As with Exhibits A-J, the information contained in Exhibits K-N was developed with significant investment of business and technical resources by numerous people in the ExxonMobil organization and its predecessors. Competitors with this knowledge could harm ExxonMobil in the marketplace by

² As set forth in the attached declaration, in a few instances, ExxonMobil's predecessors disclosed documents that are the subject of this motion to the California Air Resources Board in connection with efforts to obtain on-line certification. Similarly, documents relating to the Benicia Refinery that are the subject of this motion may have been disclosed to Valero Energy in connection with the sale of that refinery to Valero. These disclosures to CARB and Valero, like such disclosures of similar documents that are the subject of ExxonMobil's motion filed October 20, 2003, were made in confidence.

exploiting limitations in ExxonMobil's blending techniques, technological development and production capacities for CARB Phase 3 gasoline. (CARB Phase 3 gasoline refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). Such competitors could also employ similar technology at lower incremental cost.

Exhibits O-Q contain future plans for blending gasoline which are still being developed and/or utilized. Exhibit O is Mobil's strategy for MTBE elimination. Exhibit P is the Torrance Refinery's investment and operation plan for producing CARB Phase 3 gasoline. Exhibit Q contains confidential e-mail communications regarding ExxonMobil's five year planning basis, including blend-around guidance for the Torrance Refinery. ExxonMobil and its predecessors devoted substantial business resources to the research and development behind each of these documents. The information found in Exhibits O-Q is material to ExxonMobil's business and goes to the heart of ExxonMobil's gasoline production effort and plans in California. Disclosure of this information to competitors could cause serious harm to ExxonMobil's business.

Exhibits R and S contain batch data for CARB summertime gasoline. These documents were designated "Restricted Confidential – For Attorney Eyes Only" because they contain highly commercially sensitive information. Again, disclosure of this information regarding the Torrance Refinery's production capacities, blending formulations and oxygenate requirements could cause serious and material harm to ExxonMobil's competitive position.

Finally, Exhibit T contains five excerpts from Tom Eizember's deposition as a company representative of ExxonMobil which pertain to cost estimates for development or implementation of on-line analyzer technology, potential refinery modifications and blend-around directives. These excerpts contain sensitive and confidential information that are material

to the current operations and cost position of the Torrance refinery. Public disclosure could cause ExxonMobil to suffer serious economic and competitive harm.

C. The Public Interest In Disclosure Of Exhibits A-T Is Outweighed By The Likelihood Of Serious Competitive Harm To ExxonMobil

ExxonMobil deserves “special solicitude” as a non-party requesting *in camera* treatment for its confidential business information. *See Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (order directing *in camera* treatment for sales statistics over five years old). Reasonable extensions of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* ExxonMobil has cooperated with the discovery demands in this case, and as mentioned above, has even taken steps to facilitate the access of the parties to highly sensitive non-party documents. Conversely, public disclosure of documents and testimony reflecting ExxonMobil’s confidential blending strategies, describing its on-line analyzer technology and revealing its batch data will not promote the resolution of this matter. Nor will these documents uniquely enhance public understanding of these proceedings, particularly in light of the fact that ExxonMobil is not seeking protection for the 25 other ExxonMobil documents on Unocal’s supplemental list of hearing exhibits, 137 other documents on Complaint Counsel’s exhibit list or the more than 40 remaining deposition excerpts designated by Complaint Counsel. The balance of interests clearly favors *in camera* protection for Exhibits A-T. *See In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

D. Protection For Exhibits A-T Should Extend For Five Years

The value to ExxonMobil’s business of the information contained in Exhibits A-T warrants lasting protection. Confidential blending technologies and strategies are crucial to ExxonMobil’s competitiveness as a leading refiner of CARB Phase 3 gasoline. Given the

importance of the information in Exhibits A-T to ExxonMobil's current operations and competitive position, ExxonMobil respectfully requests that this testimony be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits A-T satisfy the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC rulings. Accordingly, this Court should extend *in camera* protection to ExxonMobil's confidential documents and excerpts of deposition testimony included in this motion and attached declaration. We have conferred with Complaint Counsel and counsel for Unocal about this Motion and the specific materials for which *in camera* protection is sought, and they both have indicated that they do not oppose this Motion.

DATED: October 24, 2003

Respectfully submitted,

Donald B. Craven
AKIN GUMP STRAUSS HAUER &
FELD, LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

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[PROPOSED] ORDER

Upon consideration of Non-Party ExxonMobil's Unopposed Second Motion For *In Camera* Treatment Of Hearing Exhibits Designated By Complaint Counsel and Union Oil Company Of California, **IT IS HEREBY ORDERED** that the following materials are to be provided *in camera* treatment:

EXHIBIT	CX / RX	PRODUCTION BATES NUMBERS
A	CX 2079	EXMOUNO-0000142 to 178
B	CX 2080	EXMOUNO-0000179 to 216
C	CX 2081	EXMOUNO-0000217 to 257
D	CX 2082	EXMOUNO-0000258 to 265
E	CX 2083	EXMOUNO-0000266 to 273
F	CX 2084	EXMOUNO-0000274 to 282
G	CX 2087	EXMOUNO-0000451 to 458
H	CX 2078	EXMOUNO-0000058 to 099
I	CX 2086	EXMOUNO-0000350 to 392
J	CX 1706	EXMOUNO-0000001 to 057
K	CX 1745	EXMOUNO-0018435 to 444
L	CX 2098	EXMOUNO-0004867 to 868
M	CX 2088	EXMOUNO-0000938 to 943
N	RX 1073	EXMOUNO-0023945 to 946
O	CX 2095	EXMOUNO-0004460 to 464
P	CX 2092	EXMOUNO-0002779 to 844
Q	RX 1098	EXMOUNO-0024851 to 853
R	CX 2168	EXMOUNOBD-0000001 to 010
S	CX 1783	EXMOUNOBD-0000011 to 015
T	Eizember Deposition	Page 56, lines 17 through 22. Page 71, line 23 through page 72, line 8.

	Transcript 08/14/03	Page 76, line 17 through page 77, line 17. Page 99, line 14 through page 101, line 12. Page 104, line 23 through page 105, line 23.
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The Honorable D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that on October 24, 2003, I caused an original and two copies of Non-Party ExxonMobil's Unopposed Second Motion For In Camera Treatment Of Hearing Exhibits Designated By Complaint Counsel and Union Oil Company Of California to be filed by hand and one electronic copy of that motion to be filed by electronic mail with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580

I also certify that on October 24, 2003, I caused two copies of the foregoing motion to be served by hand delivery and U.S. mail upon:

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

I also certify that on October 24, 2003, I caused one copy of the foregoing motion to be served by hand delivery upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Richard B. Dagen, Esq.
(through service upon)
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, NW, Rm. NJ-6213
Washington, DC 20001

I also certify that on October 24, 2003, I also caused one copy of the foregoing motion to be served by U.S. mail upon:

David W. Beehler, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

Joel Christie
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036

COPY CERTIFICATION

I certify that the electronic version of NON-PARTY EXXONMOBIL'S SECOND MOTION FOR *IN CAMERA* TREATMENT OF HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL AND UNION OIL COMPANY OF CALIFORNIA filed by electronic mail with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with original signature has been filed with the Secretary of the Commission on this day.

Dated October 24, 2003

By: _____

Joel Christie
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036