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

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,
a corporation.

Docket No. 9305

**RESPONDENT UNION OIL COMPANY OF CALIFORNIA'S OBJECTIONS TO
COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSIONS**

Unocal objects to Complaint Counsel's First Set of Requests for Admissions pursuant to Federal Trade Commission Rule of Practice § 3.32.

GENERAL OBJECTIONS

Unocal's responses to each individual request set forth in Complaint Counsel's First Set of Requests for Admissions are subject to, and incorporate by reference, the following general objections:

1. Unocal objects to each request to the extent it seeks information that is protected from discovery by the attorney-client privilege, attorney work product immunity, joint defense privilege and/or any other privilege afforded under law. Unocal's response to each request is limited to those matters which are not subject to any such privilege and/or immunity.

2. Unocal objects to the Instructions and each request to the extent they seek to impose any obligation above and/or inconsistent with the requirements of Federal Trade Commission Rule of Practice § 3.32 specifically and 16 C.F.R. § 3 et seq. generally. Unocal will answer each request consistent with its obligations under the Federal Trade Commission Rules of Practice.

3. Without assuming an obligation to do so, Unocal reserves the opportunity to supplement its response to each request at a future date if and when it deems that to be appropriate.

4. The fact that Unocal responds to part of any request is not intended and shall not be construed to be a waiver by Unocal of all or any part of any objection to any request.

5. As to any request with respect to which Unocal initially asserts an objection, and then, and without waiving its objection, provides an admission or denial, the provision of such admission or denial is solely for the purposes of (1) aiding discovery and (2) demonstrating Unocal's good faith effort to supply information.

SPECIFIC OBJECTIONS

REQUEST NO. 1:

Admit that Patent No. 5,288,393 is valid.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. The request, as phrased, is unclear as to exactly what Complaint Counsel is asking, i.e., whether Unocal admits the '393 Patent is a validly issued patent by the Patent & Trademark Office ("PTO") or whether Unocal admits that any or all of the claims of the '393 Patent are "valid." While the PTO makes determinations of patentability that result in the issuance of patents, it is generally left to the courts to make validity determinations in the context of infringement actions. Thus, Unocal objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion that is reserved for the courts. Unocal further objects to the request, as it is phrased, as improper and illogical due to the fact the courts do not make findings that patent claims are valid per

se. Instead, courts determine whether the patent claims are “not invalid” under such patent statutes as 35 U.S.C. §§ 101, 102, 103 and 112.

REQUEST NO. 2:

Admit that Patent No. 5,593,567 is valid.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. The request, as phrased, is unclear as to exactly what Complaint Counsel is asking, i.e., whether Unocal admits the ‘567 Patent is a validly issued patent by the Patent & Trademark Office or whether Unocal admits that any or all of the claims of the ‘567 Patent are “valid.” While the PTO makes determinations of patentability that result in the issuance of patents, it is generally left to the courts to make validity determinations in the context of infringement actions. Thus, Unocal objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion that is reserved for the courts. Unocal further objects to the request, as it is phrased, as improper and illogical due to the fact the courts do not make findings that patent claims are valid per se. Instead, courts determine whether the patent claims are “not invalid” under such patent statutes as 35 U.S.C. §§ 101, 102, 103 and 112.

REQUEST NO. 3:

Admit that Patent No. 5,653,866 is valid.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. The request, as phrased, is unclear as to exactly what Complaint Counsel is asking,

i.e., whether Unocal admits the '866 Patent is a validly issued patent by the Patent & Trademark Office or whether Unocal admits that any or all of the claims of the '866 Patent are "valid." While the PTO makes determinations of patentability that result in the issuance of patents, it is generally left to the courts to make validity determinations in the context of infringement actions. Thus, Unocal objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion that is reserved for the courts. Unocal further objects to the request, as it is phrased, as improper and illogical due to the fact the courts do not make findings that patent claims are valid per se. Instead, courts determine whether the patent claims are "not invalid" under such patent statutes as 35 U.S.C. §§ 101, 102, 103 and 112.

REQUEST NO. 4:

Admit that Patent No. 5,837,126 is valid.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. The request, as phrased, is unclear as to exactly what Complaint Counsel is asking, i.e., whether Unocal admits the '126 Patent is a validly issued patent by the Patent & Trademark Office or whether Unocal admits that any or all of the claims of the '126 Patent are "valid." While the PTO makes determinations of patentability that result in the issuance of patents, it is generally left to the courts to make validity determinations in the context of infringement actions. Thus, Unocal objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion that is reserved for the courts. Unocal further objects to the request, as it is phrased, as improper and illogical due to the fact the courts do not make findings that patent claims are valid per se. Instead,

courts determine whether the patent claims are “not invalid” under such patent statutes as 35 U.S.C. §§ 101, 102, 103 and 112.

REQUEST NO. 5:

Admit that Patent No. 6,030,521 is valid.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. The request, as phrased, is unclear as to exactly what Complaint Counsel is asking, i.e., whether Unocal admits the ‘521 Patent is a validly issued patent by the Patent & Trademark Office or whether Unocal admits that any or all of the claims of the ‘521 Patent are “valid.” While the PTO makes determinations of patentability that result in the issuance of patents, it is generally left to the courts to make validity determinations in the context of infringement actions. Thus, Unocal objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion that is reserved for the courts. Unocal further objects to the request, as it is phrased, as improper and illogical due to the fact the courts do not make findings that patent claims are valid per se. Instead, courts determine whether the patent claims are “not invalid” under such patent statutes as 35 U.S.C. §§ 101, 102, 103 and 112.

REQUEST NO. 6:

Admit that Patent No. 5,593,567 is presumed valid pursuant to 35 U.S.C. § 282.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. It is not clear from the request, as phrased, the nature of the presumption to which

Complaint Counsel is asking Unocal to admit. 35 U.S.C. § 282 establishes a statutory presumption that “is operative to govern procedure in litigation involving validity of an issued patent . . .” *In re Etter*, 756 F.2d 852, 856 (Fed. Cir. 1985). Unocal objects to this request to the extent it is asking Unocal to admit the existence of any presumption in addition to the specific presumption that arises pursuant to 35 U.S.C. § 282 in patent infringement actions, which are under the exclusive jurisdiction of the federal courts. The presumption under 35 U.S.C. § 282 has no independent evidentiary value, but rather, merely serves to place burden of proof on the person who asserts invalidity in an infringement proceeding. Thus, for example, this statutory presumption is not operative in reexamination proceedings at the Patent & Trademark Office. Unocal further objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion.

REQUEST NO. 7:

Admit that Patent No. 5,653,866 is presumed valid pursuant to 35 U.S.C. § 282.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. It is not clear from the request, as Unocal objects to this request as vague and ambiguous. It is not clear from the request, as phrased, the nature of the presumption to which Complaint Counsel is asking Unocal to admit. 35 U.S.C. § 282 establishes a statutory presumption that “is operative to govern procedure in litigation involving validity of an issued patent . . .” *In re Etter*, 756 F.2d 852, 856 (Fed. Cir. 1985). Unocal objects to this request to the extent it is asking Unocal to admit the existence of any presumption in addition to the specific presumption that arises pursuant to 35 U.S.C. § 282 in patent infringement actions, which are under the exclusive

jurisdiction of the federal courts. The presumption under 35 U.S.C. § 282 has no independent evidentiary value, but rather, merely serves to place burden of proof on the person who asserts invalidity in an infringement proceeding. Thus, for example, this statutory presumption is not operative in reexamination proceedings at the Patent & Trademark Office. Unocal further objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion.

REQUEST NO. 8:

Admit that Patent No. 5,387,126 is presumed valid pursuant to 35 U.S.C. § 282.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. It is not clear from the request, as Unocal objects to this request as vague and ambiguous. It is not clear from the request, as phrased, the nature of the presumption to which Complaint Counsel is asking Unocal to admit. 35 U.S.C. § 282 establishes a statutory presumption that “is operative to govern procedure in litigation involving validity of an issued patent . . .” *In re Etter*, 756 F.2d 852, 856 (Fed. Cir. 1985). Unocal objects to this request to the extent it is asking Unocal to admit the existence of any presumption in addition to the specific presumption that arises pursuant to 35 U.S.C. § 282 in patent infringement actions, which are under the exclusive jurisdiction of the federal courts. The presumption under 35 U.S.C. § 282 has no independent evidentiary value, but rather, merely serves to place burden of proof on the person who asserts invalidity in an infringement proceeding. Thus, for example, this statutory presumption is not operative in reexamination proceedings at the Patent & Trademark Office. Unocal further objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion.

REQUEST NO. 9:

Admit that Patent No. 6,030,521 is presumed valid pursuant to 35 U.S.C. § 282.

OBJECTION(S):

In addition to asserting its general objections, Unocal objects to this request as vague and ambiguous. It is not clear from the request, as phrased, the nature of the presumption to which Complaint Counsel is asking Unocal to admit. 35 U.S.C. § 282 establishes a statutory presumption that “is operative to govern procedure in litigation involving validity of an issued patent . . .” *In re Etter*, 756 F.2d 852, 856 (Fed. Cir. 1985). Unocal objects to this request to the extent it is asking Unocal to admit the existence of any presumption in addition to the specific presumption that arises pursuant to 35 U.S.C. § 282 in patent infringement actions, which are under the exclusive jurisdiction of the federal courts. The presumption under 35 U.S.C. § 282 has no independent evidentiary value, but rather, merely serves to place burden of proof on the person who asserts invalidity in an infringement proceeding. Thus, for example, this statutory presumption is not operative in reexamination proceedings at the Patent & Trademark Office. Unocal further objects to this request to the extent it calls for Unocal to admit or deny a legal conclusion.

REQUEST NO. 10:

Admit that Unocal will not enforce Patent No. 5,288,393.

OBJECTION(S):

Unocal reasserts its general objections.

REQUEST NO. 11:

Admit that Unocal will not enforce Patent No. 5,593,567.

OBJECTION(S):

Unocal reasserts its general objections.

REQUEST NO. 12:

Admit that Unocal will not enforce Patent No. 5,653,866.

OBJECTION(S):

Unocal reasserts its general objections.

REQUEST NO. 13:

Admit that Unocal will not enforce Patent No. 5,837,126.

OBJECTION(S):

Unocal reasserts its general objections.

REQUEST NO. 14:

Admit that Unocal will not enforce Patent No. 6,030,521.

OBJECTION(S):

Unocal reasserts its general objections.

Dated: August 11, 2003.

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
CALIFORNIA

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2003, I caused the original and two paper copies to be delivered for filing via U.S. Mail and caused an electronic copy to be delivered for filing via e-mail of Respondent Union Oil Company of California's Objections to Complaint Counsel's First Set of Requests for Admissions 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 August 7, 2003, I also caused one paper copy of Respondent Union Oil Company of California's Objections to Complaint Counsel's First Set of Requests for Admissions to be served upon each person listed below via overnight delivery (Federal Express):

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Senior Litigation Counsel
Federal Trade Commission
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Original Signature on File with Commission

Bethany D. Krueger