

**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 MOTION FOR *IN CAMERA* TREATMENT OF
HEARING EXHIBITS DESIGNATED BY UNION OIL COMPANY OF CALIFORNIA**

Non-party ExxonMobil Inc. (“ExxonMobil”) moves for an order directing *in camera* treatment of five documents that Union Oil Company of California (“Unocal”) has designated for possible introduction at the hearing scheduled to begin on November 13, 2003. ExxonMobil produced over 25,000 pages of discovery material in response to Unocal’s discovery demands in this matter. Unocal notified ExxonMobil on September 26, 2003 that it intended to introduce into evidence approximately 117 exhibits from the ExxonMobil subpoena production in this matter, along with several other sources of discovery material provided by ExxonMobil and its predecessors. From Unocal’s comprehensive exhibit list, ExxonMobil has identified five documents for *in camera* protection. Public disclosure of one or more of these documents 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 confidential business documents identified in the Declaration in support of this Motion, and attached thereto as Exhibits A-E.

**EXXONMOBIL'S CONFIDENTIAL DOCUMENTS DESERVE *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-E is fundamental to ExxonMobil's current gasoline refining operations, particularly its refinery in Torrance, California. ExxonMobil has guarded the confidentiality of these documents carefully. Public disclosure of these materials would 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-E 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 Documents

ExxonMobil has taken significant steps to protect the confidential nature of each document for which it seeks protection. These Exhibits were provided to Unocal only under compulsory process. The documents were designated "Confidential" under the Protective Order in this matter 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 for the purpose of expediting discovery while ensuring that materials produced would receive sufficient protection from disclosure to competitors. That agreement permits the non-party refiners to invoke a 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 a document to a witness who is an employee of a competitor of the producing party. Finally, ExxonMobil has followed procedures to preserve the confidentiality of information shared with its business partners, as described more fully in the attached Declaration and as demonstrated by its treatment of Exhibit A. All these efforts show that ExxonMobil has preserved the confidentiality of Exhibits A-E.

B. Disclosure Of The Information In Exhibits A-E 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, Exhibit A is a proposed agreement between ExxonMobil and another large refiner that permits both parties to employ each other's technologies for clean fuels without fear of injunctions or oppressive royalty payments. As described in the Declaration, disclosure of this document could damage ExxonMobil's ability to negotiate other such mutually beneficial agreements. Exhibits B and C are identical copies of an Exxon Corporation (the predecessor of ExxonMobil) presentation to the California Air Resources Board ("CARB") concerning on-line certification technology at Exxon Corporation's Benicia Refinery.¹ Exhibits D and E are confidential business planning documents relating to research, development and deployment of on-line certification technology at the Torrance or Benicia Refineries. The information contained in all four of these Exhibits was developed with significant investment of business and technical resources by numerous people in the ExxonMobil organization and its predecessors. If this information were disclosed to a competitor, that competitor could harm ExxonMobil in the marketplace by exploiting limitations in ExxonMobil's blending techniques and production capacities for CARB Phase 3 gasoline. (CARB Phase 3 refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). That competitor could also employ similar technology at lower incremental cost.

¹ The Benicia Refinery was sold to Valero Energy Corporation in May 2000.

C. The Public Interest In Disclosure Of Exhibits A-E 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 fully 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, publicly revealing a document that contains a private patent non-assertion agreement and disclosing four documents reflecting ExxonMobil’s confidential blending strategies 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 more than 100 other ExxonMobil documents on Unocal’s list of hearing exhibits. The balance of interests clearly favors *in camera* protection for Exhibits A-E. *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-E Should Extend For Five Years

The value to ExxonMobil’s business of the proposed Agreement contained in Exhibit A warrants lasting protection. ExxonMobil respectfully requests that this document be afforded *in camera* protection for a period of five years. Similarly, confidential blending technologies and strategies are crucial to ExxonMobil’s competitiveness as a leading refiner of CARB Phase 3 gasoline. Given the importance of Exhibits B-E to ExxonMobil’s current operations and competitive position, ExxonMobil respectfully requests that these documents be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits A-E 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 these confidential documents of ExxonMobil. We have exchanged correspondence with counsel for Unocal about this Motion and the specific documents for which *in camera* protection is sought, and they have indicated that they do not oppose this Motion.

DATED: October 17, 2003

Respectfully submitted,

Donald B. Craven
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Washington, DC 20036

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[PROPOSED] ORDER

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

EXHIBIT	RX	PRODUCTION BATES NUMBERS
A	517	EXMOUNO-0018040 to 56
B	571	EXMOUNO-0002897 to 2905
C	204	EXMOUNO-0002897 to 2905
D	977	EXMOUNO-0000100 to 141
E	1021	EXMOUNO-0021358 to 59

The Honorable D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that on October 17, 2003, I caused an original and two copies of Non-Party ExxonMobil's Unopposed Motion For In Camera Treatment Of Hearing Exhibits Designated By 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 17, 2003, I caused two copies of the foregoing motion to be served by 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 17, 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 17, 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

C. Fairley Spillman
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 MOTION FOR *IN CAMERA* TREATMENT OF HEARING EXHIBITS DESIGNATED BY 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 17, 2003

By: _____

C. Fairley Spillman
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue NW
Washington, DC 20036