

Interlocutory Orders, Etc.

E.I. DUPONT DE NEMOURS & COMPANY

Docket No. 9108. Order, June 22, 2011

Order extending *in camera* treatment for certain trial exhibits for an additional ten years and placing remaining trial exhibits on the public record.

ORDER EXTENDING IN CAMERA TREATMENT FOR CERTAIN
DOCUMENTS AND ORDERING OTHER DOCUMENTS PLACED ON THE
PUBLIC RECORD

During the administrative hearings in this matter, Administrative Law Judge Miles J. Brown ordered that certain trial exhibits receive *in camera* protection until September 4, 1979. On August 10, 1979, Judge Brown issued a second order, which granted *in camera* treatment to those exhibits until the date the Commission issued its final order or until such time as the Commission ordered otherwise. The Commission thereafter issued orders dated January 21, 1981, and June 12, 1984, in response to motions from E.I. Du Pont de Nemours & Co. (“DuPont”) requesting three year extensions of *in camera* treatment. On April 25, 1990, the Commission granted an extension of ten years for forty-seven pages of documents that contained detailed cost information. DuPont was granted another ten-year extension on December 21, 2000, for eighteen pages of documents. Shortly before the 2000 Order would have expired, DuPont once again moved for a ten-year extension of *in camera* treatment for one document in its entirety, and portions of several other documents that contain detailed cost and operations data.

DuPont argues that the exhibits identified in its Motion have an “unusual competitive sensitivity” because they contain detailed cost information and that the release of the data contained in the documents would cause “clearly defined, serious injury” to DuPont. Respondent further maintains that its competitors, if granted access to such detailed cost and operations information, could ascertain DuPont's current costs through the use of readily available extrapolation techniques. Finally, DuPont claims that its competitors

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could gain valuable insight about DuPont's closely held and proprietary production process.

The Commission concludes that the remaining exhibit pages continue to meet the standard for *in camera* treatment set forth in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961), as refined by *Bristol-Myers Co.*, 90 F.T.C. 455 (1977), and *General Foods Corp.*, 95 F.T.C. 352 (1980), and that they also possess a uniqueness that extends their competitive sensitivity beyond the three-year period normally considered sufficient for confidential business data to have lost most of its competitive relevance. The Commission also concludes that the competitive value of this type of data will not quickly diminish and that its release has the potential to inflict serious competitive injury upon DuPont for the foreseeable future. The Commission recognizes that certain types of information, regardless of age, warrants protection from public disclosure. *See, e.g., Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984); F.T.C. Rule 3.45 (b)(3).

Given the unusual level of detailed cost and operations data contained in the identified trial exhibits, the existence of precise extrapolation techniques, and the limited amount of technological innovation that has occurred in the titanium dioxide industry, the Commission finds that DuPont has made a sufficient showing that these particular documents merit protection for another ten years.

IT IS THEREFORE ORDERED that the following exhibits presently in the *in camera* record of Docket No. 9108 shall remain *in camera* for ten years from the date of this Order, at which time DuPont may show cause why these documents should not be made public.

<u>Exhibit Numbers</u>	<u>Document Numbers</u>
*CX 64 D, E, H, I	08265, 08266, 08269, 08270

* Redacted portions of these exhibit pages will be placed on the public record consistent with Exhibit C of DuPont's Motion.

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*CX 81 A, C, E	09429, 09431, 09433
*CX 82 A	04789
*CX 208 A-B	70736, 70737
*CX 210 D, E, G, H	70849, 70850, 70852, 70-854
CX 209 T-V, X	70839-70841, 70843

IT IS FURTHER ORDERED THAT the Secretary shall place on the public record, no sooner than ten (10) calendar days after receipt of this notification by the Respondent and once all documents are located, the remaining exhibits that were identified in and subject to the Commission's December 21, 2000 *in camera* order in this matter as well as the portions of the above exhibit pages for which *in camera* treatment is not granted.

By the Commission.

* Redacted portions of these exhibit pages will be placed on the public record consistent with Exhibit C of DuPont's Motion.