

# EXHIBIT B

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UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of :  
Union Oil Company of California, : Docket No.  
A Corporation. : 9305  
:  
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Videotaped Deposition of DAVID BALTO  
Washington, D.C.  
Thursday, August 7, 2003  
9:08 a.m.

Job No.: 1-20528  
Pages 1 through 43  
Reported by: Cynthia R. Simmons

09:13:42 1 right?

09:13:42 2 MR. ROBERTI: I don't care.

09:13:43 3 MR. ORLANS: Okay.

09:13:43 4 MR. WILDFANG: Maybe at a break, I can  
09:13:45 5 give you copies.

6 BY MR. WILDFANG:

09:13:52 7 Q. I've marked, as Exhibit 401, a January  
09:13:56 8 17th letter, January 17th, 1996 letter to you from  
09:14:03 9 M. Laurence Popofsky, which has various  
09:14:08 10 attachments to it. Do you recognize that letter?

09:14:10 11 A. I see what it says.

09:14:11 12 Q. Do you have a recollection of having  
09:14:13 13 received it?

09:14:13 14 A. No.

09:14:15 15 Q. Do you have a general recollection of  
09:14:18 16 having had communications with Mr. Popofsky or  
09:14:23 17 other lawyers on behalf of the oil companies, with  
09:14:25 18 respect to Unocal?

09:14:26 19 MR. ROBERTI: Objection to form.

09:14:40 20 A. What do you mean by general recollection?

09:14:42 21 Q. Well, there are a series of, of letters,  
09:14:46 22 either to you or copied to you, that I've had  
09:14:50 23 marked --

09:14:50 24 A. Right.

09:14:50 25 Q. -- as Exhibits 401 through 409, and I just

09:14:54 1 wondered if, as a general matter, do you have a  
09:14:56 2 recollection of there having been an investigation  
09:15:00 3 by the FTC of matters relating to Unocal, back in  
09:15:03 4 about 1996?

09:15:14 5 A. Yes, it's a general matter.

09:15:17 6 Q. Okay. Let me just get the mechanics out  
09:15:20 7 of the way here.

09:15:20 8 A. Sure.

09:15:21 9 Q. If you'd look at Exhibit 401 -- or 402,  
09:15:25 10 which is a letter dated March 5, 1996 to you from  
09:15:29 11 Mr. Popofsky and, again, there are various  
09:15:32 12 attachments to that letter. Do you recognize that  
09:15:34 13 letter?

09:15:35 14 A. No.

09:15:36 15 Q. You don't have any recollection of having  
09:15:37 16 received that letter?

09:15:38 17 A. No.

09:15:39 18 Q. As a general matter, when you were  
09:15:42 19 attorney advisor to Chairman Pitofsky, if a letter  
09:15:47 20 was addressed to you, did it usually end up on  
09:15:50 21 your desk?

09:15:51 22 A. Yes.

09:15:53 23 Q. If you would look at Exhibit 403, which is  
09:15:57 24 a letter dated April 5, 1996 to you from Mr.  
09:16:04 25 Popofsky, do you recognize that letter?

09:20:59 1 investigation of Unocal back in 1996?

09:21:03 2 A. No, I don't believe so.

09:21:06 3 Q. Do you have any idea of where the reporter  
09:21:09 4 got the, the understanding that the FTC had  
09:21:14 5 earlier decided not to challenge the conduct of  
09:21:18 6 Unocal?

09:21:19 7 A. No, I don't. No.

09:21:19 8 MR. ROBERTI: Objection to form. You can  
09:21:21 9 answer.

09:21:21 10 A. No, I don't.

09:21:25 11 Q. Okay. Let me take you back now to Exhibit  
09:21:30 12 401 and then the subsequent exhibits. I think you  
09:21:36 13 had indicated earlier that these are documents,  
09:21:38 14 which I provided to you, at least most of these  
09:21:41 15 are documents I provided to you a few days ago.  
09:21:45 16 What I'm interested in is your best recollection,  
09:21:49 17 your most complete recollection of the  
09:21:53 18 communications between the FTC and the lawyers for  
09:21:58 19 oil refiners in California, with respect to Unocal  
09:22:01 20 patents back in 1996.

09:22:03 21 Tell me everything you recall about those  
09:22:05 22 communications.

09:22:11 23 A. Sometime in -- well, just to put this in  
09:22:17 24 context, I was the attorney advisor to the  
09:22:20 25 chairman, and it was an extremely busy job.

09:27:22 1 in Exhibit 409, the Wall Street Journal article,  
09:27:30 2 that officials at the FTC concluded that the law  
09:27:33 3 shielded Unocal's dealings with the California  
09:27:36 4 board, and that the agency couldn't win the case.  
09:27:38 5 You don't know whether that's a correct or  
09:27:41 6 incorrect statement?

09:27:41 7 A. No, I don't know if that's correct or  
09:27:46 8 incorrect.

09:27:47 9 Q. Do you know, for a fact, that in 1996 the  
09:27:49 10 FTC did not challenge the, the conduct of Unocal?

09:27:54 11 A. That's correct.

09:27:58 12 Q. The letters from Mr. Popofsky, which I've  
09:28:04 13 marked as exhibits, go into great detail  
09:28:08 14 describing the factual background, would you agree  
09:28:10 15 with that?

09:28:11 16 MR. ROBERTI: Objection to form.

09:28:13 17 A. I've briefly looked at these because  
09:28:21 18 you've sent them to me. I guess they provide a  
09:28:29 19 certain level of detail of factual background.

09:28:32 20 Q. If you'd look at Exhibit 401?

09:28:35 21 A. Sure.

09:28:35 22 Q. The attachment, which begins at  
09:28:38 23 Bates-numbered document FTC HE0000005. This is a  
09:28:48 24 document of some 20 or so pages. Is this a  
09:28:55 25 document which is commonly referred to as a white

09:30:35 1 what the sources of them are but, but, no, I mean,  
09:30:39 2 other than that, I wouldn't know what the sources  
09:30:42 3 of the document were.

09:30:43 4 Q. Well, let me ask a somewhat less ambiguous  
09:30:47 5 question, all right? Do you know whether or not  
09:30:48 6 the materials attached to the March 5, 1996 letter  
09:30:52 7 to you and Mr. Atalics from Larry Popofsky were  
09:30:59 8 evidentiary materials from litigation that was  
09:31:02 9 ongoing between Unocal and the other oil refiners?

09:31:04 10 MR. ROBERTI: Objection to form.

09:31:06 11 A. I don't, I don't know right now, and the  
09:31:08 12 only way I would know would be by looking at these  
09:31:17 13 materials. I don't know right now, and the only  
14 way I would know is by looking at -- through the  
09:31:17 15 materials.

09:31:22 16 Q. Do you have a recollection of whether or  
09:31:24 17 not you knew, at the time, in 1996 that there was  
09:31:29 18 ongoing litigation between Unocal and Exxon Mobil  
09:31:33 19 and other oil refiners over the Unocal patents?

09:31:37 20 A. I believe I knew that.

09:31:51 21 Q. Do you know what the outcome of that  
09:31:53 22 litigation was?

09:31:54 23 A. I believe that Unocal won.

09:31:57 24 Q. Do you know -- strike that.

09:32:00 25 Did you know at the time, that is in about

09:32:03 1 1996, that the, the oil refiners, who were in  
09:32:09 2 litigation with Unocal over their patents, had  
09:32:14 3 asserted essentially the same claims now being  
09:32:16 4 brought by the FTC in its current investigation?

09:32:19 5 MR. ROBERTI: Objection, form.

09:32:22 6 Q. Let, let me rephrase it. Were you aware  
09:32:27 7 in 1996 that the oil refiners, who had sued Unocal  
09:32:32 8 over the Unocal patents, had asserted that Unocal  
09:32:38 9 should be stopped from enforcing its patents  
09:32:41 10 because of their conduct before the California Air  
09:32:44 11 Resources Board?

09:32:46 12 A. I have a general recollection of that but  
09:32:51 13 not a very deep understanding of that. If I can  
09:32:54 14 just explain, you know, this is an area which you  
09:32:56 15 can see that I've written a lot of articles about.  
09:32:59 16 I've written about Dell computer and the  
09:33:02 17 consequences of Dell computer, and I've, you know,  
09:33:05 18 looked at this area in some depth.

09:33:06 19 And we could go through all those  
09:33:09 20 articles, and you'd never see any reference to the  
09:33:11 21 Unocal matter. I mean, it's not, it's not  
09:33:13 22 something that I sort of categorized in this group  
09:33:17 23 of this subset of conduct that I saw as being  
09:33:25 24 problematic in Dell.

09:33:33 25 Q. So in the articles that you've written on