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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 WALTER LIEW, CHRISTINA LIEW, USA
PERFORMANCE TECHNOLOGY, INC.,
15 and ROBERT MAEGERLE,
16 Defendants.
17

Case No. CR 11-0573-JSW (NC)

**DECLARATION OF STUART L. GASNER
IN SUPPORT OF RENEWED MOTION
FOR AN ORDER REVOKING THE
DETENTION ORDER AND GRANTING
PRETRIAL RELEASE OF WALTER
LIEW**

Date: December 19, 2012
Time: 11:00 a.m.
Place: Courtroom A, 15th Floor
Dept.: Hon. Magistrate Judge
Nathanael Cousins

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21 **EXHIBITS A, B, C, D, I AND J SUBMITTED UNDER SEAL**
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1 I, Stuart L. Gasner, declare and state that:

2 1. I am an attorney licensed to practice law in the State of California and am a
3 member of the law firm of Kecker & Van Nest LLP, located at 633 Battery Street, San Francisco,
4 California 94111, counsel for defendants Walter Liew and USA Performance Technology, Inc. in
5 the above-captioned action. I am duly admitted to practice law before this Court. Except where
6 expressly stated, I have knowledge of the facts set forth herein, and if called to testify as a witness
7 thereto, could do so competently under oath.

8 2. My colleagues at Kecker & Van Nest and I have reviewed the box of C-1 Materials
9 produced to us by the Government. We are unaware of any document marked as C-1 by the
10 Government that shows the direct transmission of any DuPont document to China. Preliminary
11 examination of the C-1 materials has revealed only two technical documents (attached as Exhibit
12 A) with the DuPont logo and confidentiality legends on them that were apparently found in the
13 defendants' possession, and that the Government contends contain trade secrets.

14 3. The C-1 box principally consists of several kinds of materials (1) internal DuPont
15 technical materials obtained by the Government from DuPont in the investigation, such as a
16 lengthy technical manual from 1985 relating to DuPont titanium dioxide plants (the "Basic Data
17 document"); (2) sketches and notes apparently prepared by Bob Maegerle, a consultant hired by
18 Mr. Liew's company USAPTI and now a co-defendant, who had spent a long and successful
19 career at DuPont before retiring in 1991 to work as a consultant; (3) design materials or
20 specifications from Mr. Liew's companies (Performance Group and USAPTI); and (4) extensive
21 commentary from DuPont engineers opining as to how the information in Mr. Maegerle's
22 apparent notes and sketches "must have" come from the Basic Data document or other DuPont
23 sources.

24 4. As of the date of this filing, the Government has yet to identify any documents that
25 it contends deserve C-1 treatment on the hard drive seized from a safety deposit box at Bank of
26 East Asia allegedly belonging to Walter Liew.

27 5. I am informed and believe the F.B.I. interviewed Jian Liu on June 16, June 21, and
28 July 6 of 2011 at the U.S. Attorney's Office in San Francisco. From my review of the FBI 302's,

1 it is plain that the FBI was already focused on a potential trade secret case at the time of those
2 interviews.

3 6. My colleague Cathleen Crane performed a search of the United States Patent and
4 Trademark database for the term “titanium dioxide” on November 14, 2012. Her search results
5 indicate that 71,680 individual United States patents contain the terms “titanium dioxide.”

6 7. I understand from conversations with attorneys for the United States in this case
7 that the Government intends to file another superseding indictment alleging various financial
8 crimes against Walter Liew. The Government has informed us of its plans to file this superseding
9 indictment since at least May 1, 2012. On or around July 10, 2012, Assistant U.S. Attorney John
10 Hemann told me that the Government anticipated seeking this superseding indictment in
11 September 2012. On or around November 8, 2012, Assistant U.S. Attorney Peter Axelrod
12 informed me that the Government anticipates seeking this superseding indictment within a few
13 months.

14 8. I am informed and believe that after Mr. Liew was sued civilly by DuPont in April
15 2011, he met voluntarily with DuPont’s investigator, lawyers and engineers to explain how he
16 developed his plant designs.

17 9. On May 1, 2012, Assistant U.S. Attorney John Hemann asked me, in an electronic
18 message, to provide him with 18 terabytes of hard drive space to hold the Government’s
19 forthcoming production of documents.

20 10. On May 1, 2012, my colleagues and I met with Assistant United States Attorneys
21 John Hemann and Peter Axelrod to discuss discovery in this matter. During that meeting,
22 Hemann and Axelrod stated that they intended to produce at some unspecified time a number of
23 categories of documents, including: (1) devices seized from Timothy Spitler and co-defendant
24 Tze Chao, (2) hard copy documents seized from and/or voluntarily provided by John Liu, (3) a
25 collection of the key documents relevant to the issues in this case pursuant to *United States v.*
26 *Skilling*, and (4) additional FBI interview summaries.

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1 11. In the August 10, 2012 letter attached hereto as Exhibit S, I again requested copies
2 of all four of the categories of documents described in paragraph 10 above (among other things).
3 The Government has not, to date, produced *any* documents from these four categories.

4 12. The August 10, 2012 letter also raised a variety of discovery issues and questions.
5 For example, during the May 1, 2012 meeting described in paragraph 10 above, I informed the
6 Government that I believe Mr. Liew is entitled to copies of the notes taken by DuPont
7 investigators at the meeting between Mr. Liew and DuPont described in paragraph 8 above, and
8 that the Government is obligated to obtain and produce those notes. I re-iterated this request in
9 the August 10, 2012 letter attached hereto as Exhibit S. The Government has not indicated
10 whether it agrees to obtain and produce the requested notes and has not otherwise responded to
11 this request.

12 13. Another example is that a number of the email files produced by the Government
13 in July 2012 are corrupt and unopenable, including all of the files from four email accounts
14 subpoenaed by the Government. The Government has not responded to my firm's repeated
15 requests—including in the August 10, 2012 letter attached hereto as Exhibit S and in a separate
16 September 19 email communication—for a readable version of these files.

17 14. Many of the documents produced by the Government as C-1 materials contain
18 notes by DuPont engineers that are illegible. Despite multiple requests—including requests in
19 writing on August 10, 2012, September 19, 2012, and October 15, 2012—the Government still
20 has not produced legible copies of many of those illegible notes. For example, Exhibit D at C1-
21 001442 contains many illegible comments from DuPont engineers; after many requests for a
22 legible copy, the Government produced the version attached hereto (with handwritten control
23 numbers), which is still completely illegible. The Government acknowledged as much in
24 forwarding the document, and promised to provide a legible copy, but as of this date has not done
25 so.

26 15. I am informed and believe that there are numerous titanium dioxide plants around
27 the world that have been owned by a multitude of companies, which means that there have been
28 an extraordinary number of opportunities for titanium dioxide technology to have been

1 disseminated publicly. I am informed and believe that these companies include Dupont Corp.
2 Ltd., with plants located in New Johnsonville, Delisle, and Edge Moor (USA), Altamira
3 (Mexico), and Kuan Yin (Taiwan); Tronox Ltd., with plants located in Hamilton (USA),
4 Savannah (USA) (now closed), Botlek (Netherlands), and Kwinana TiWest JV (Australia);
5 Kronos Worldwide, Inc., with plants located in Leverkusen (Germany), Lake Charles (USA),
6 Langerbrugge (Belgium), Varennes (Canada), and Nordenham (Germany); Huntsman Pigments
7 International LLC, with plants located in Greatham (UK), Lake Charles (USA), Calais (France),
8 Scarlino (Italy), Huelva (Spain), Teluk Kalung (Malaysia), and Umbogintwini (South Africa);
9 Cristal Global Co., with plants located in Ashtabula (USA), Stallingborough (UK), Kemerton
10 (Australia), Yanby (Saudi Arabia), Thann (France), Bahia (Brazil), Baltimore (USA), and
11 LeHavre (France). I am informed and believe that there are additional titanium dioxide plants in
12 Funshun Jinming Titanium (China), Luoyang Sunrui Wanji Titanium (China), Zunyi Titanium
13 Co. (China), Osaka Titanium (Japan), Toho Titanium Ltd. (Japan), Ust-Kamenogorsk Titanium
14 and Magnesium Plant JSC (Kazakhstan), and VSMPO-AVISMA (Russia).

15 16. Attached hereto as **Exhibit A** are true and correct copies of two technical
16 documents bearing the DuPont logo and confidentiality legends that apparently were found in the
17 defendants' possession. These documents have been designated by the Government as C-1
18 materials.

19 17. Attached hereto as **Exhibit B** are true and correct copies of sketches and notes
20 apparently prepared by Bob Maegerle. These documents have been designated by the
21 Government as C-1 materials.

22 18. Attached hereto as **Exhibit C** are true and correct copies of design materials or
23 specifications from Mr. Liew's companies (Performance Group and USAPTI). These documents
24 have been designated by the Government as C-1 materials.

25 19. Attached hereto as **Exhibit D** are true and correct copies of extensive commentary
26 from DuPont engineers on notes, specifications and sketches seized from the defendants. These
27 documents have been designated by the Government as C-1 materials. These are but a sampling
28 of the memos from the DuPont engineers, which in their totality claim wrongful similarities

1 between DuPont processes and USAPTI's in everything from plant layout to ore handling,
2 chlorination, gas pre-cooling, condensation, oxidation, solids removal, finishing, and various
3 aspects of budgeting for, equipping, staffing, and running a titanium dioxide plant.

4 20. Attached hereto as **Exhibit E** are true and correct copies of US Patent Nos.
5 2,488,439, dated Nov. 15, 1949; 2,856,264, dated October 14, 1958; and 5,201,949 dated April
6 13, 1993.

7 21. Attached hereto as **Exhibit F** are true and correct copies of pages 309-339 from
8 TITANIUM: ITS OCCURRENCE, CHEMISTRY, AND TECHNOLOGY by Jelks Barskdale (The Ronald
9 Press Company 1949).

10 22. Attached hereto as **Exhibit G** is a true and correct copy of a report from the
11 European Commission entitled, "*Integrated Pollution Prevention and Control Reference*
12 *Document on Best Available Techniques for the Manufacture of Large Volume Inorganic*
13 *Chemicals – Solids and Others,*" dated August 2007.

14 23. Attached hereto as **Exhibit H** are true and correct copies of two pamphlets from
15 the Chlorine Institute, one on "Bulk Storage of Liquid Chlorine" dated October 2005, and one on
16 "Chlorine Vaporizing Systems" dated October 2002, as well as an excerpt from the website of
17 Thermal Ceramics.

18 24. Attached hereto as **Exhibit I** are true and correct copies of the first 100 pages of a
19 drive directory printed from the EnCase image of the safety deposit box hard drive seized by the
20 Government, numbered SVE 034332, entitled "HDD from Safety Deposit Box." This directory
21 shows the folder structure of this one hard drive; the full version is 633 pages long. This 100-
22 page excerpt does not include the file names contained within each folder; many of the folders
23 contain large number of individual files, some of them named in the Chinese language. The drive
24 as a whole appears to be the kind of generic computer back-ups that any small business owner
25 might keep, with a hodgepodge of company materials, research from public sources, family
26 pictures and videos and back-ups of favorite music (including "oldies," "rock" and "songs of the
27 70's"). Navigating or searching a restored version of the drive is extremely difficult; the only
28 practical way to find relevant documents is for Mr. Liew sit at a computer and to browse the drive

1 with the benefit of his unique knowledge as to the file structure, titanium dioxide technology, the
2 history of his company, and which folders do not contain relevant information.

3 25. Attached hereto as **Exhibit J** is a true and correct copy of an example of the
4 detailed engineering work prepared by engineers employed by USA Performance Technology,
5 Inc., located on the safety deposit box hard drive seized by the Government numbered SVE
6 034332.

7 26. Attached hereto as **Exhibit K** are true and correct copies of three documents
8 bearing the name “DuPont” found on the safety deposit box hard drive seized by the Government
9 numbered SVE 034332. Each document’s location on the hard drive is specified in the document
10 footer. At first glance, the documents might appear to contain confidential technical information.

11 27. Attached hereto as **Exhibit L** are true and correct copies of publicly available
12 DuPont documents found on the Internet that are exact copies of the three documents attached as
13 Exhibit K hereto. Each document’s location on the Internet is specified in the document footer.

14 28. Attached hereto as **Exhibit M** are true and correct copies of documents relating to
15 the Dublin Federal Penitentiary’s “Make the Right Choice” program, completed by Walter Liew
16 on June 27, 2012.

17 29. Attached hereto as **Exhibit N** are true and correct copies of Liew family photos,
18 located on the hard drive seized by the Government numbered SVE 034332.

19 30. Attached hereto as **Exhibit O** are true and correct copies of Michael Liew’s school
20 report cards for the school year 2011-2012.

21 31. Attached hereto as **Exhibit P** are true and correct copies of various pieces of
22 correspondence and other documentation regarding the proposed purchase of 18 Shelford Road
23 #08-02, Singapore.

24 32. Attached hereto as **Exhibit Q** are true and correct copies of various news articles
25 relating to China’s denials of its involvement in economic espionage.

26 33. Attached hereto as **Exhibit R** is a true and correct copy of an article from
27 Bloomberg, dated February 8, 2012, entitled, “Ex-Motorola Worker Guilty of Trade Secret
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1 Theft,” available at [http://www.bloomberg.com/news/2012-02-08/ex-motorola-worker-guilty-of-](http://www.bloomberg.com/news/2012-02-08/ex-motorola-worker-guilty-of-stealing-trade-secrets-for-china-judge-says.html)
2 [stealing-trade-secrets-for-china-judge-says.html](http://www.bloomberg.com/news/2012-02-08/ex-motorola-worker-guilty-of-stealing-trade-secrets-for-china-judge-says.html).

3 34. Attached hereto as **Exhibit S** is a true and correct copy of a letter dated August 10,
4 2012 from me to John Hemann and Peter Axelrod.

5 35. What Mr. Liew needs to do to defend himself against the sweeping allegations of
6 the current indictment is to review the C-1 materials in detail; decipher the aspects of the titanium
7 dioxide process that the Government alleges to be trade secrets; find in the terabytes of discovery
8 the work-product demonstrating how USAPTI developed the feature in question; find
9 communications with Pangang and others (many in Chinese) relating to that aspect of the project;
10 search the Internet, technical libraries and otherwise research relevant disclosures; communicate
11 by telephone with experts, vendors and others in the field with relevant knowledge; and otherwise
12 engage in a collaborative process with counsel that requires both breadth of research and depth of
13 investigation to rebut the Government’s technical allegations.

14 36. Since Keker & Van Nest entered its appearance in April 2012, counsel have
15 expended massive effort to master the electronic materials produced to date, but their sheer
16 volume makes the going inordinately slow. There is no feasible way to load all of the documents
17 onto a litigation support platform. It is possible to “restore” drives from EnCase into native
18 format at a cost of several hundred dollars per drive, but that yields a complex folder structure
19 (many of the headings in Chinese) that must be viewed on a computer in native format and that
20 cannot easily be searched. It is possible to print selected batches of documents to bring a restored
21 drive to the prison, and then sit side by side with Mr. Liew while he assists in finding relevant
22 documents. But that process is simply too slow and cumbersome to make substantial progress.

23 37. The Federal Detention Center in Dublin is approximately a 45-minute drive from
24 the Keker & Van Nest offices in San Francisco. After extensive paperwork and other delays,
25 counsel is escorted into a small interview room where a face-to-face meeting can be conducted,
26 albeit under video surveillance. A laptop can be brought into the interview room, conditioned on
27 executing additional paperwork (on each visit) requiring the disabling of all wireless equipment
28 that would allow Internet access. Given the detention center’s needs for “counts” and other

1 administrative matters, it is difficult to conduct a meeting of more than three hours in duration
2 without lengthy interruption or skipping meals. As a practical matter, each three hour session
3 requires roughly six hours of attorney time (due to travel time and administrative delays), which,
4 based on the realities of scheduling, makes it difficult to visit Mr. Liew more than once a week
5 and effectively doubles the cost of consulting with counsel.

6 38. Mr. Liew is not permitted to possess a computer while in detention, nor is he
7 permitted under the Protective Order to possess “highly confidential” or C-1 materials. Counsel
8 is not permitted to leave documents directly with Mr. Liew, but instead must either send the
9 documents through the United States mail or leave them for Mr. Liew in a prison drop box.
10 Materials left for or mailed to the Detention Center often take inordinately lengthy periods of time
11 to be delivered (sometimes weeks), and there are practical limits on the quantities of materials
12 that can be printed out and mailed. As a result of these restrictions, the collaboration between
13 counsel and client is exactly the opposite of what it should be. Rather than having Mr. Liew—
14 who is highly motivated and uniquely qualified—wade through the terabytes of documents
15 produced by the Government (substantial portions of them in Chinese) and select documents of
16 significance to discuss with counsel, counsel must attempt to identify the important documents,
17 print them, and bring them to Dublin to review with Mr. Liew...or sit idly by while Mr. Liew
18 tries to find them on a restored drive under video surveillance. If, upon meeting with Mr. Liew, it
19 turns out that the attorneys have missed the mark in what they chose, or other documents or
20 Internet resources are necessary to make progress, counsel cannot simply pull up those documents
21 on the spot. The entire conversation must be delayed until the next visit to Dublin. Mr. Liew can
22 achieve little meaningful preparation unless counsel is physically present. Intensive document
23 review and collaboration is, in practical effect, impossible.

24 39. Moreover, many of the critical documents in this case are computer-aided design
25 (“CAD”) or other types of files that must be analyzed on a computer in their native form, because
26 printing them out loses significant data, including many of the numbers and calculations
27 underlying the designs. Accordingly, it is difficult if not impossible for Mr. Liew to do
28 meaningful work on his defense in between attorney visits. And some of the work that Mr. Liew

1 would ordinarily be expected to do so as to participate in his defense--such as helping to review
2 the more than 100,000 emails produced by the Government in electronic form--he cannot do at
3 all, because those emails can only be reviewed on Concordance on the Kecker & Van Nest
4 litigation support network, which cannot be accessed from the detention center

5 40. Simply put, the status quo does not provide counsel or Mr. Liew a manageable
6 way to defend a case involving complex charges of trade secret theft, multiple terabytes of
7 discovery (a substantial portion of it in Chinese) , and many documents that can only be
8 meaningfully reviewed electronically. What Mr. Liew needs to do to defend this case is to spend
9 his every waking hour reviewing documents (including C-1 documents), doing research, and
10 engaging in a daily back-and-forth with experts and counsel. This is prohibitively burdensome, if
11 not down-right impossible, in a prison setting. The difference is fundamental and qualitative: 50
12 three-hour visits in the Dublin detention center interview room does not equal three 50-hour
13 weeks in a conference room at counsel's office engaged in meaningful collaboration with full
14 access to electronic evidence. And it is the latter—full work weeks devoted to preparation
15 without artificial constraints—that will be required to get this case to trial in any reasonable
16 timeframe, given the vast quantity of electronic discovery.

17 41. Attached hereto as **Exhibit T** are true and correct copies of certain pages of the
18 Transcript of Proceedings before this Court dated August 24, 2011.

19 42. Attached hereto as **Exhibit U** are true and correct copies of certain pages of the
20 Transcript of Proceedings before this Court dated February 1, 2012.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct and that this declaration was executed on November 20, 2012, at San
23 Francisco, California.

24
25 /s/ Stuart L. Gasner
STUART L. GASNER