

1 KEKER & VAN NEST LLP
STUART L. GASNER - # 164675
2 sgasner@kvn.com
SIMONA A. AGNOLUCCI - # 246943
3 sagnolucci@kvn.com
KATHERINE M. LOVETT - # 276256
4 klovett@kvn.com
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: 415 391 5400
6 Facsimile: 415 397 7188

7 Attorneys for Defendants WALTER LIEW and
USA PERFORMANCE TECHNOLOGY, INC.

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
15 PERFORMANCE TECHNOLOGY, INC.,
and ROBERT MAEGERLE,

16 Defendants.
17

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

**DECLARATION OF SIMONA A.
AGNOLUCCI IN SUPPORT OF JOINT
MOTION FOR BILL OF PARTICULARS**

Date: June 6, 2013
Time: 2:00 p.m.
Place: Courtroom 11, 19th Floor
Dept.: Hon. Jeffrey S. White

18
19
20 **EXHIBITS P, Q, R, S, U, V, W, X and Y SUBMITTED UNDER SEAL**
21
22
23
24
25
26
27
28

1 I, SIMONA A. AGNOLUCCI, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and an associate
3 with 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 **THE CHLORIDE ROUTE PROCESS GENERALLY**

9 2. Attached hereto as **Exhibit A** is a true and correct copy of a printout from the
10 website of Titan Advanced Metals, entitled, "Titanium Overview," *available at*
11 <http://www.titaniferous.com/overview/> (last visited May 1, 2013).

12 3. Attached hereto as **Exhibit B** is a true and correct copy of a publicly available
13 photograph of DuPont's Edgemoor plant, *available at*
14 http://farm4.static.flickr.com/3343/4626279373_576a02d271.jpg (last visited May 1, 2013).

15 4. Attached hereto as **Exhibit C** is a true and correct copy of a publicly available
16 photograph of DuPont's Edgemoor plant, *available at*
17 <http://www.flickr.com/photos/greenpeaceusa09/7362666528> (last visited May 1, 2013).

18 5. Attached hereto as **Exhibit D** is a true and correct copy of a printout from
19 DuPont's website, listing DuPont's titanium dioxide plants, *available at*
20 [http://www2dupont.com/Titanium_Technologies/en_US/sales_support/about_us/manufacturing_s](http://www2dupont.com/Titanium_Technologies/en_US/sales_support/about_us/manufacturing_sites/index.html)
21 [ites/index.html](http://www2dupont.com/Titanium_Technologies/en_US/sales_support/about_us/manufacturing_sites/index.html) (last visited May 1, 2013).

22 6. Attached hereto as **Exhibit E** is a true and correct copy of a newspaper article
23 entitled, "Ohio Firm to Share DuPont Process," published in the Delaware Morning News, dated
24 August 18, 1967.

25 7. I understand from speaking with titanium dioxide experts in connection with this
26 case that some titanium dioxide plants started as sulfate route plants and added chloride route
27 "lines," while others were designed to operate exclusively as chloride route plants.

28

1 8. Attached hereto as **Exhibit F** is a true and correct copy of a printout from the
2 website of TZMI.com, entitled, “Global TiO₂ Pigment Producers, Comparative Cost Study 2006”
3 which lists all TiO₂ plants that utilize the chloride route process, *available at*
4 http://www.tzmi.com/Portals/0/PDF_Flyers/PCS06_WEB.pdf (last visited May 1, 2013).

5 9. Attached hereto as **Exhibit G** is a true and correct copy of the Consolidated
6 Complaint filed in the District Court of Maryland in the matter of *Haley Paint Company, et al. v.*
7 *E.I. DuPont De Nemours, et al.*, Case Number 10-CV-00318-RDB, dated April 12, 2010.

8 **PUBLIC DISCLOSURES OF TITANIUM DIOXIDE TECHNOLOGY**

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

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

16 12. Attached hereto as **Exhibit I** are true and correct copies of pages 309-39 from
17 TITANIUM: ITS OCCURRENCE, CHEMISTRY, AND TECHNOLOGY, by Jelks Barskdale (The Ronald
18 Press Company 1949).

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

23 14. Attached hereto as **Exhibit K** is a true and correct copy of an excerpt from the
24 website www.morganthermalceramics.com, a product supplier for TiO₂ producers (last visited
25 May 1, 2013).

26 15. Attached hereto as **Exhibit L** are true and correct copies of two pamphlets from
27 the Chlorine Institute, one entitled “Bulk Storage of Liquid Chlorine” and dated October 2005,
28 and one entitled “Chlorine Vaporizing Systems” and dated October 2002.

1 16. Attached hereto as **Exhibit M** is a true and correct copy of an excerpt from
2 INDUSTRIAL MINERALS AND ROCKS (The Ronald Press Company 1949) entitled “Titanium
3 Minerals,” by Langtry Lynd and Stanley LeFond, found at pages 1303-50 and bates stamped
4 O32-MISC_3_MAPS-000442-489.

5 17. Attached hereto as **Exhibit N** is a true and correct copy of a paper presented by
6 G.S. McNulty of Huntsman Pigments, entitled “Production of titanium dioxide,” *available at*
7 <http://v.pl.3.eu-norm.org/index.pdf> (last visited May 1, 2013).

8 18. Attached hereto as **Exhibit O** is a true and correct copy of a case study entitled
9 “Strategic Capacity Preemption: DuPont (Titanium Dioxide),” by Douglas C. Dobson, William
10 G. Shepherd, and Robert D. Stoner, dated 1980, found at pages 157-89 from THE ANTITRUST
11 REVOLUTION: ECONOMICS, COMPETITION, AND POLICY, edited by John E. Kwoka and Lawrence J.
12 White (Oxford University Press 2008), *available at*
13 http://www.oup.com/us/pdf/kwoka/0673468801_06.pdf (last visited May 1, 2013).

14 **GENERIC DESCRIPTION OF CONTENTS OF C-1 MATERIAL**

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

26 20. Attached hereto as **Exhibit P** are true and correct copies of two technical
27 documents bearing the DuPont logo and confidentiality legends that apparently were seized by
28

1 the government. These documents are described in Trade Secrets 2 and 4 in the Second
2 Superseding Indictment, ¶ 14, and have been designated by the government as C-1 materials.

3 21. Attached hereto as **Exhibit Q** are true and correct copies of sketches and notes
4 apparently prepared by Bob Maegerle. These documents have been designated by the
5 government as C-1 materials.

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

9 23. Attached hereto as **Exhibit S** are true and correct copies of extensive commentary
10 from DuPont engineers on notes, specifications and sketches seized from the defendants. These
11 documents have been designated by the government as C-1 materials. These are but a sampling
12 of the memos produced from DuPont engineers, which in their totality claim wrongful
13 "similarities" between DuPont processes and USAPTI's processes in everything from plant layout
14 to ore handling, chlorination, gas pre-cooling, condensation, oxidation, solids removal, finishing,
15 and various aspects of budgeting for, equipping, staffing, and running a titanium dioxide plant.
16 Some of the annotations suggest that DuPont considers the "similarities" to be a trade secret, and
17 others do not.

18 **VOLUME OF DISCOVERY AND USAPTI ENGINEERING WORK**

19 24. Attached hereto as **Exhibit T** is a true and correct copy of the Declaration of
20 Joshua Maremont, dated March 13, 2013, previously filed in this case as Dkt. 272. This
21 declaration explains the volume and scope of discovery in this case. Based upon a review of a
22 portion of the electronic discovery in this case by my colleagues and myself, the electronic
23 materials contain a significant amount of work product produced by USAPTI, its predecessor
24 companies, and their various employees and consultants.

25 25. Attached hereto as **Exhibit U** are true and correct copies of the first 100 pages of a
26 drive directory printed from the EnCase image of the safety deposit box hard drive seized by the
27 government, numbered SVE 034332, entitled "HDD from Safety Deposit Box." This directory
28 shows the folder structure of this one hard drive; the full version is 633 pages long. This 100-

1 page excerpt does not include the file names contained within each folder; many of the folders
2 contain large number of individual files, some of them named in the Chinese language. The drive
3 as a whole appears to be the kind of generic computer back-up that any small business owner
4 might keep, with a hodgepodge of company materials, research from public sources, family
5 pictures and videos and back-ups of favorite music (including “oldies,” “rock” and “songs of the
6 70’s”). Navigating or searching a restored version of the drive is extremely difficult; the only
7 practical way to find relevant documents is for Mr. Liew sit at a computer and to browse the drive
8 with the benefit of his unique knowledge as to the file structure, titanium dioxide technology, the
9 history of his company, and the folders that do not contain relevant information.

10 26. Attached hereto as **Exhibit V** is a true and correct copy of an example of the
11 detailed engineering work prepared by engineers employed by USA Performance Technology,
12 Inc., located on the safety deposit box hard drive seized by the government numbered SVE
13 034332.

14 27. Attached hereto as **Exhibit W** are true and correct copies of excerpts from the
15 1985 DuPont “Basic Data document.” These documents have been designated by the government
16 as C-1 materials.

17 **TZE CHAO MATERIALS**

18 28. The government recently produced to defendants two boxes of C-1 materials
19 seized from Tze Chao, a defendant named in the Superseding Indictment who has since pleaded
20 guilty. These materials contain a large number of documents that appear to be DuPont internal
21 documents. Attached hereto as **Exhibit X** is a true and correct copy of spreadsheets provided by
22 the government containing detailed analyses from DuPont engineers of the Tze Chao materials.
23 These documents have been designated by the government as C-1 materials.

24 29. Attached hereto as **Exhibit Y** is a true and correct copy of the plea agreement of
25 Tze Chao, dated March 2, 2012, Dkt. 75.

26 **DIFFICULTIES OF TRIAL PREPARATION**

27 30. I understand from my client Walter Liew that virtually all of the business records
28 of USAPTI and Performance Group were seized pursuant to search warrants in July 2011. While

1 the seized materials have been produced in discovery, they are largely in an electronic format that
2 is not readily searchable. It is no easy task to isolate comprehensive collections of contracts,
3 receipts, payments, financial instruments, or records of transfers. My colleagues and I have
4 inspected the originals of these materials located at FBI offices in Palo Alto, and it is no easier to
5 find relevant documents in that fashion. Mr. Liew has been incarcerated since July 2011 and can
6 be of little assistance in reconstructing his financial affairs at the level of detail needed.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct to the best of my knowledge and that this declaration was executed
9 on May 2, 2013, at San Francisco, California.

10
11 /s/ Simona A. Agnolucci
12 SIMONA A. AGNOLUCCI
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Kecker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On **May 2, 2013**, I served the following document(s):

Declaration of Simona A. Agnolucci in Support of Joint Motion for Bill of Particulars (With Exhibits)

by **COURIER**, by placing copies in a sealed envelope addressed as shown below, and dispatching a messenger with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving the package with the person whose name is shown or the person authorized to accept courier deliveries on behalf of the addressee.

<i>Attorneys for United States:</i>	<i>Attorneys for Christina Liew:</i>
John H. Hemann / Peter B. Axelrod United States Attorney's Office 450 Golden Gate Avenue, 11th Floor San Francisco, CA 94102	Doron Weinberg Law Offices of Doron Weinberg 523 Octavia Street San Francisco, CA 94102

by **FEDEX**, by placing a true and correct copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Kecker & Van Nest LLP for correspondence for delivery by FedEx Corporation. According to that practice, items are retrieved daily by a FedEx Corporation employee for overnight delivery.

<i>Attorneys for Tze Chao (Redacted Version):</i>	<i>Attorney for Robert Maegerle:</i>
Edmund D. Lyons Lyons Law Firm 1526 Gilpin Avenue Wilmington, DE 19806	Jerome J. Froelich, Jr. McKenney & Froelich 1349 West Peachtree Street Two Midtown Plaza, Suite 1250 Atlanta, GA 30309

Executed on May 2, 2013, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Robert W. Thomas
Robert W. Thomas