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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 UNITED STATES OF AMERICA,)	CASE NO. CR 11-0573 JSW
)	
15 Plaintiff,)	DECLARATION OF PETER B. AXELROD IN
)	SUPPORT OF SEALING CERTAIN EXHIBITS TO
16 v.)	AGNOLUCCI DECLARATION RE:
)	DEFENDANTS' ADMINSTRATIVE MOTION TO
17 WALTER LIEW; CHRISTINA LIEW; USA)	SEAL (DOCKET NO. 311)
18 PERFORMANCE TECHNOLOGY, INC.;)	
AND ROBERT MAEGERLE,)	
)	
19 Defendants.)	
)	

20
21 I, Peter B. Axelrod, declare and state as follows:

- 22 1. I am an Assistant United States Attorney assigned to the prosecution of the above-caption matter.
- 23 2. I make this declaration in response to an administrative motion filed by defendants Walter Liew
- 24 and USA Performance Technology, Inc. (USAPTI) to file under seal certain exhibits to the declaration
- 25 of Simona Agnolucci in support of defendants' joint motion for bill of particulars. Docket No. 311. In
- 26 her declaration, Ms. Agnolucci attached nine exhibits – P, Q, R, S, U, V, W, X, and Y – with a request
- 27 that those documents be filed under seal. Docket No. 315. Thereafter, the Court ordered that those
- 28 exhibits remain under seal pending further order of the Court. Docket No. 320. On August 20, 2013,

1 the United States advised the Court that it intended to confer with DuPont and thereafter provide a
2 declaration related to the seal-ability of those exhibits. Docket No. 429.

3 3. On August 29, 2013, the United States conferred with representatives from DuPont concerning
4 the sealed exhibits and whether those exhibits contained proprietary DuPont information that is not in
5 the public record. Prior to that consultation, the United States had provided DuPont with copies of the
6 exhibits.

7 4. Pursuant to Criminal Local Rule 55-1(b) and Civil Local Rule 79-5(d), the United States requests
8 that the Court maintain six of those exhibits under seal and will lodge concurrently an appropriate
9 sealing order. The United States has no objection to the public filing of exhibits U, V, and Y. Based on
10 its conversations with DuPont, the United States believes that Exhibits P, Q, R, S, W, and X contain
11 proprietary DuPont information that is not in the public record and therefore these documents should
12 remain under seal.

13 5. Exhibit P is comprised of two DuPont drawings, Drawing No. W1245258, entitled "Edge Moor
14 Plant Oxidation W/RPS System Drawing," and Flow Sheet No. EK2411, entitled "Edge Moor Pigments
15 Plant Flow Sheet," that are specifically identified as Trade Secrets 2 and 4 respectively in the Second
16 Superseding Indictment (hereinafter, Indictment). Docket No. 269, ¶ 14(b) and (d). As set forth in the
17 Indictment, the drawing identified as Trade Secret 2 contained information about the titanium dioxide
18 (TiO₂) oxidation area process and explicitly stated that the "information and know-how [] may not be
19 used nor the drawing reproduced without the written permission of DuPont." *Id.* at ¶ 14(b). The
20 drawing identified as Trade Secret 4 contained information about the TiO₂ reaction area process, was
21 marked "DuPont Confidential – Special Control," and provided that the "employee receiving this
22 registered print will sign and print the attached acknowledging card, will properly safeguard this print
23 and will be held personally accountable for this print." *Id.* at ¶ 14(d).

24 6. Exhibit Q is a series of hand-drawn sketches that appear to be from defendant Robert Maegerle.
25 According to DuPont, these drawings contain DuPont specific designs and dimensions.

26 7. Exhibit R contains specifications for certain pieces of equipment and plans and equipment
27 specifications with a USAPTI legend for Panzhihua Iron & Steel (Group) Company (*e.g.*, Pangang

1 Group), for the 100,000 MTPY TiO₂ project. According to DuPont, these documents contain DuPont
2 technology, including information related to its Edge Moor plant and flue pond in particular.

3 8. Exhibit S is a series of DuPont analyses of various documents encountered in the course of the
4 investigation related to this prosecution. The analyses identify particular proprietary DuPont
5 information, including information from the Basic Data Document, which is Trade Secret 5 in the
6 Indictment. Docket No. 269 at ¶ 14(e).

7 9. Exhibit W is selected portions of DuPont Document EM-C-8510-0148, titled “60,000 Metric
8 Tons Per Year Scope/Basic Data,” dated October 31, 1985, addressed to R.J. Maegerle (the “Basic Data
9 Document”), which is identified as Trade Secret 5 in the Indictment. As set forth more fully in the
10 Indictment, the Basic Data Document is designed “Confidential – Special Control,” and its security
11 statement provided that it is “highly confidential” and “[m]uch of the report data are considered in the
12 ‘trade secret’ category.” Docket No. 269 at ¶ 14(e).

13 10. Exhibit X is a spreadsheet related to documents obtained from searches associated with co-
14 defendant Tze Chao and identified as confidential by the United States under the terms of the Protective
15 Order in this case. The vast majority of these documents are from DuPont, and the spreadsheet was
16 prepared by the United States with DuPont’s assistance. The spreadsheet contains a column called
17 Reviewer’s Abstract which contains DuPont’s description of the nature of each particular document and,
18 according to DuPont, those descriptions refer to confidential DuPont information that is not in the public
19 domain.

20 I declare under penalty of perjury that the foregoing is true and correct to the best of my
21 knowledge and that this declaration was executed on September 12, 2013 in San Francisco, California.

22
23 MELINDA HAAG
24 United States Attorney

25 /s/
26 _____
27 PETER B. AXELROD
28 Assistant United States Attorney

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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,) NO. CR 11-0811 EMC
14)
15 Plaintiff,) [PROPOSED] ORDER SEALING CERTAIN
16 v.) EXHIBITS TO AGNOLUCCI DECLARATION RE:
17) DEFENDANTS' ADMINSTRATIVE MOTION TO
18) SEAL (DOCKET NO. 311)
19 WALTER LIEW; CHRISTINA LIEW; USA)
20 PERFORMANCE TECHNOLOGY, INC.;)
21 AND ROBERT MAEGERLE,)
22)
23 Defendants.)

24 Pursuant to Criminal Local Rule 55-1(b), Civil Local Rule 79-5, and based on the parties'
25 submissions in response to defendant Walter Liew's administrative motion to file under seal certain
26 exhibits to the declaration of Simona A. Agnolucci in Support of Joint Motion for Bill of Particulars
27 (Docket No. 311), including the declaration of Assistant United States Attorney Peter B. Axelrod, the
28 Court hereby GRANTS IN PART and DENIES IN PART defendant's administrative sealing motion.

The Court finds that Exhibits P, Q, R, S, W, and X to the Agnolucci Declaration (Docket No.
315) are sealable. Thus, the Court hereby ORDERS that the Clerk of the Court maintain Exhibits P, Q,

1 R, S, W, and X to the Agnolucci Declaration (Docket No. 315) under seal absent further order of the
2 Court. The Court further finds that Exhibits U, V, and Y are not sealable. Thus, the Court ORDERS
3 that Exhibits U, V, and Y to the Agnolucci Declaration (Docket No. 315) shall be filed in the public
4 docket for this case.

5 IT IS SO ORDERED.

6
7
8 Date: _____

JEFFREY S. WHITE
United States District Judge