### PUBLIC VERSION

### UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Schering-Plough Corporation, a corporation,

Upsher-Smith Laboratories, a corporation,

and

American Home Products Corporation, a corporation

DEC 2 7 2001

Docket No. 9297

RESPONDENT SCHERING-PLOUGH CORPORATION'S MOTION FOR IN CAMERA TREATMENT OF CONFIDENTIAL DOCUMENTS RELATING TO PRODUCTS THAT ARE CURRENTLY IN DEVELOPMENT

Respondent Schering-Plough Compration ("Schering") moves pursuant to Rule

and profitability of these "pipeline" products. Moreover, many of the documents are forward-looking, discussing Schering's strategies to enter new markets or to expand its existing market presence.

The documents contain secret information that is material to Schering's business, competitiveness and profitability. The information contained in these documents can be used by Schering's competitors to view or extrapolate a model of Schering's development, marketing, pricing and/or sales plans. Accordingly, release of this

# PUBLIC VERSION

# UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

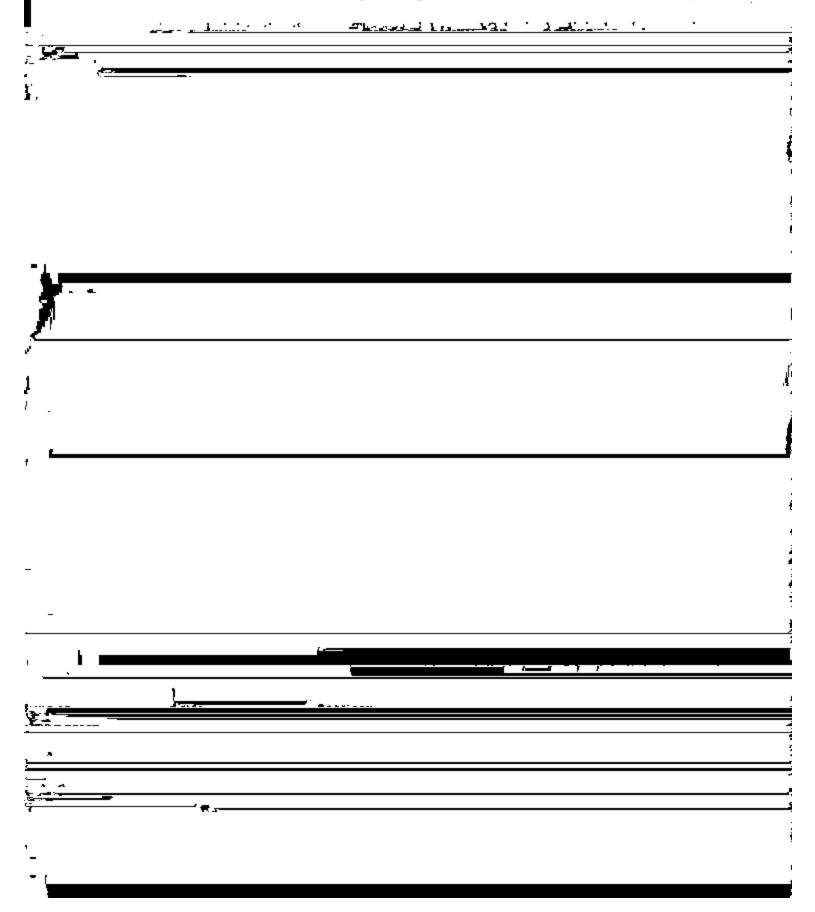
	<del></del> `
In the Matter of	<b>\</b>
Schering-Plough Corporation, a corporation,	
Upsher-Smith Laboratories, a corporation,	) Docket No. 9297
and	)
American Home Products Cornecation	<b>\</b>
-	

# I. INTRODUCTION

As set forth more fully below, each of the subject documents describes sensitive and confidential information regarding products that Schering is currently developing ("pipeline products"). These pipeline products, which are being developed at great

,	
COMPANIES COMPAN	
C Total Control of the Control of th	
•	_ <del>}</del>
	<u></u>
6 · · · · · · · · · · · · · · · · · · ·	
<u> </u>	
·	
`«	
<u> </u>	
<u> </u>	
F	
•	
<u> </u>	
	I
	•
<u></u>	
·	
	7
- v-j-	
• <del>• • • • • • • • • • • • • • • • • • </del>	

clinical and economic feasibility of using Ezetimibe in combination with other drugs or



pharmaceutical products and contain sensitive clinical strategies for gaining regulatory approval for Enalapril.

<b></b>	information Einstler	; the armooment contains	e a minute d'année al la comme	arata a sa tata
	1			
	<del></del>	2		

displosure of its terms

Exhibit SPX-99 is the June 1998 license agreement with ESI Lederle, Inc., which remains in effect today. It sets forth the details of the parties' business relationship, including royalties due for the licensed products – Enalapril and Buspirone – both of which Schering is actively developing today.

		•		
	4			
Tara	PASSET.			
<b>=</b>				
-				ł
4.4-				
<u> </u>				
<del></del>				
-				
<u>4_</u>				
,				
				•
_				
τ.				
-				
煮				
· 1				
<i></i>		,		
r				
, <u> </u>				
1				
<b>t</b> -				
		٠,		
) i				
•				
·+				
<u> </u>				
–	•			
,	( a a		-	
Parana.	Andrew Brokenson	·		
<b>-</b> , ,				
. *~				
<u>.</u>				
1				
1				

#### III. ARGUMENT

### A. Legal Standard For In Camera Treatment

Pursuant to Rule 3.45, a party may obtain in camera treatment for triaterials offered into evidence if their public disclosure "will likely result in a clearly defined, serious injury to the . . . corporation requesting in camera treatment." 16 C.F.R. § 3.45(b). Demonstrating "serious injury" requires the moving party to establish that the documents are both secret and material to the movant's business. See Bristol-Myers Co., 90 F.T.C. 455 (1977); General Foods Corp., 95 F.T.C. 352 (1980); see also Hoechst Marion Russel, Inc., 2000 F.T.C. LEXIS 138 (2000). The Commission has articulated aix factors that are relevant to a determination of percent and materiality. (1) the extent-

to which the information is known outside of the movant's business; (2) the extent to

	•	v	
	В.	The Documents At Issue Relating To Se	hering's Pipeline Products
<del>-</del>			
10			
J <del>a</del>			
. '			
<u>विक्रांत्र</u> =}= = •>			·
2			
1.			
<i>f</i> ,			
-			
-		<u> </u>	
		<del>-</del> - · · ·	

\ PD35 400 (4 '10004 1' )

\_\_\_\_\_

.

··· --

for Busnirone tablets)).

The same of the sa

)     	4004\/++	
, I		
<u> </u>		
		S
f <del></del>		
· •		
,		I
•		
• _		
, <u> </u>		
4	gra <sub>g</sub> , r q , s = <del>h = m h</del> + r r r r r r r r r r r r r r r r r r	
en atum	<del></del>	
•		
<u></u>	<u> </u>	
<u> </u>		

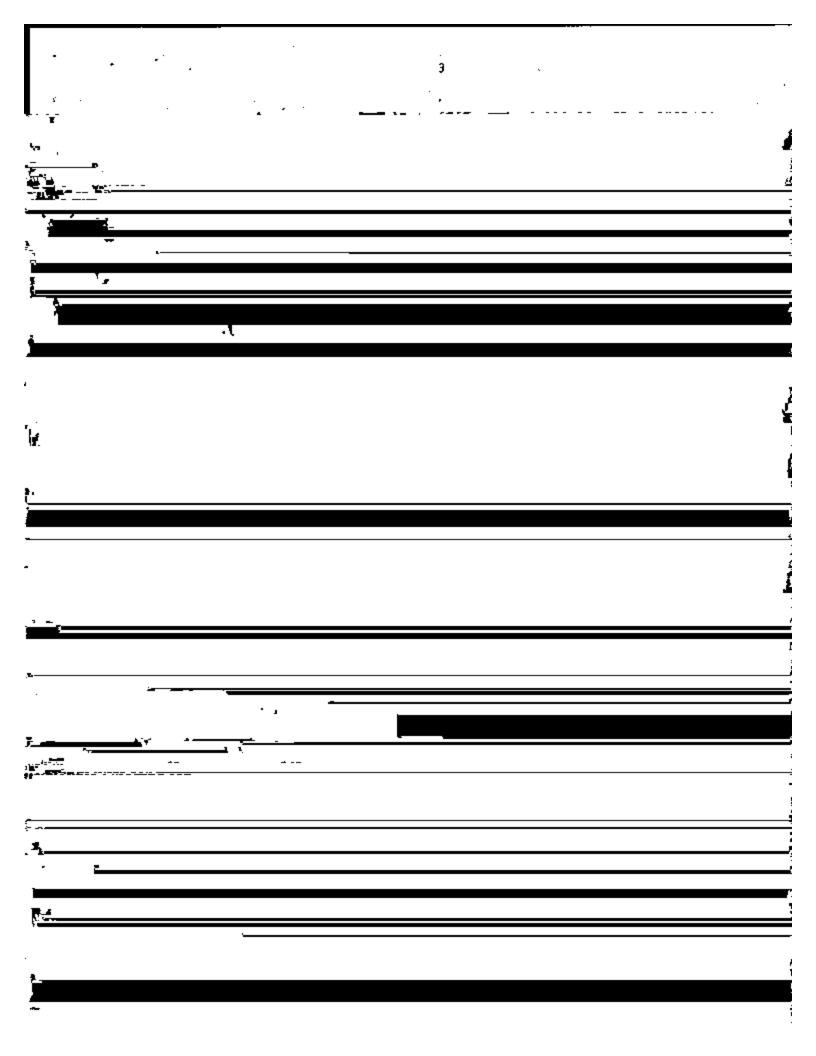
## IV. CONCLUSION

For the foregoing researce. Schering recrectfully requests that the Court grant the

# UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

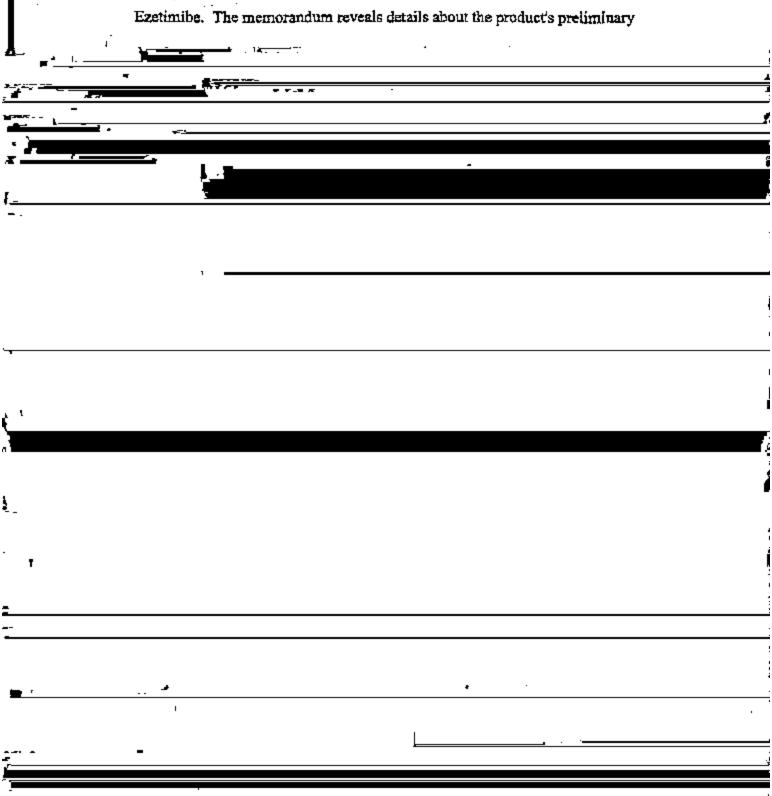
	In the Matter of	}
	Schering-Plough Corporation, a corporation,	) )
·	Upsher-Smith Laboratories, a corporation,	) Docket No. 9297
	and	}
	American Home Products Corporation, a corporation	
		<u> </u>
	· · · · · · · · · · · · · · · · · · ·	·
ī		<u> </u>
<u>.                                    </u>		
1 1-		
•		
1		
•	· -	,
		,
	The state of the s	
iana ili		
1 1		
	<u>-</u>	

	·
;	418. SPX-420. SPX-422 to SPX-428. SPX-430 to SPX-433, SPX-435 to SPX-438. SPX-
4,	44B, OT 74-42B, 111 74-42B BB 21-14B, OT 150 BB 211 1B, OT 14-150 BB 211 1B, OT 150 BB 211 B, OT 150 B, OT 15
- <u> </u>	
_	\$ ·
57 <u>-</u>	
	,
· · · · · · · · · · · · · · · · · · ·	
*. <del></del>	·
	į
	<b>(</b>
	· ·
record and designation of the	
-	Yu.
-	Y-J
x	Y-d
x	
x	*u
X 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	*u
X 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	*u
X 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	*u
X 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	*u
X 7 7 7	*u



document reveals Schering's marketing strategies and anticipated launch date for Ezetimibe.

f. Exhibit SPX-41 is a memorandum containing early stage plans for Ezetimibe. The memorandum reveals details about the product's preliminary



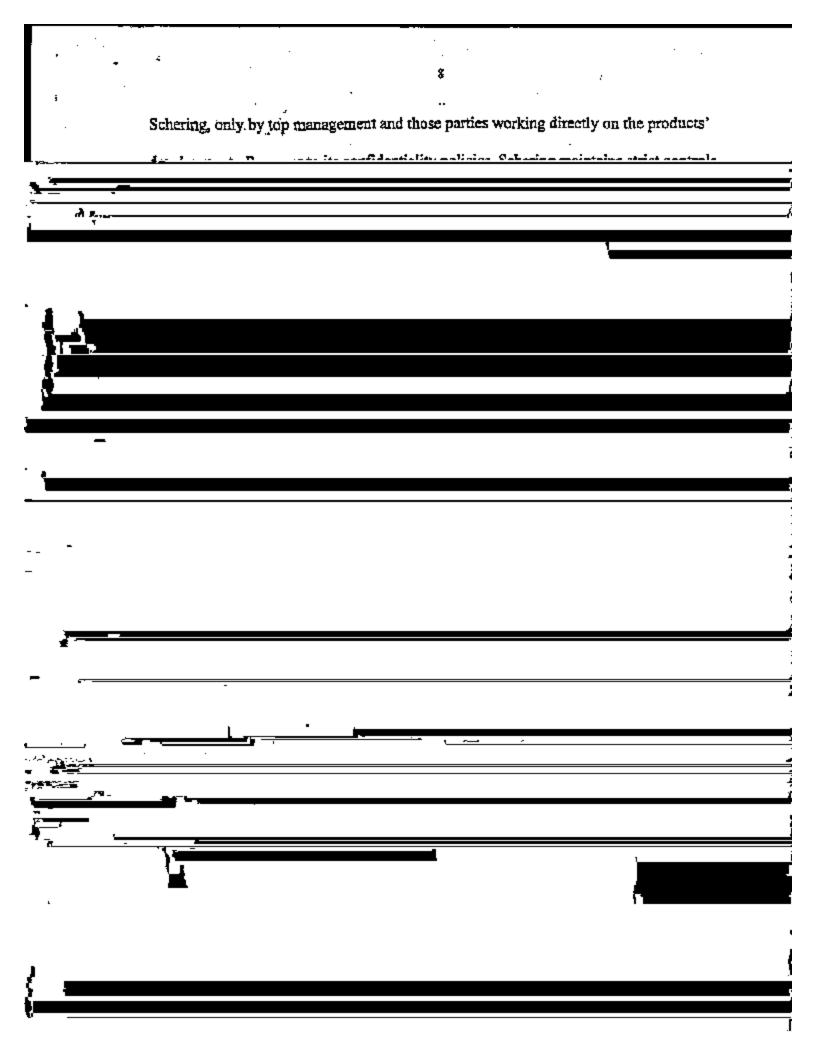
409, for example, reveals clinical protocol and biostudy details, European regulatory strategies, clinical budget information and meeting schedules.

8. Schering also seeks confidential in camera treatment for materials that reveal sensitive and confidential information regarding Buspirone, a product corrently under

Live was a result of the second of the secon		
· · · · · · · · · · · · · · · · · · ·		
· · · · · · · · · · · · · · · · · · ·		
1 1		
-		
		•
r 🛋		•
_		
.1 <sub>F</sub>	-	İ
£		
<b>*</b>		
<u>.,</u>		
_		_
.f	<del></del>	
}		
<i>i</i> 4		
-		
·		
·		
		•
		· · · · · · · · · · · · · · · · · · ·
		•
		•
		•
		•
	-	
	-	

reveals sensitive information about the clinical manufacturing of Buspirone, its material requirements and potential material suppliers.

reveals sensitive funding, pricing and payment information. Finally, the agreement contains a confidentiality provision strictly prohibiting disclosure of terms and requiring



### CERTIFICATE OF SERVICE

I hereby certify that this 27th day of December, 2001, I caused an original, one paper copy and an electronic copy of the foregoing Respondent Schering-Plough Corporation's Motion for *In Camera* Treatment of Documents Relating to Products That Are Currently in Development, supporting Memorandum and Declaration to be filed with the Secretary of the Commission, and that two paper copies were served by hand upon:

Honorable D. Michael Chappell Administrative Law Judge Federal Trade Commission Room 104 600 Pennsylvania Avenue, N.W. Washington, D.C. 20580