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	)	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 Corporation ("Schering") moves pursuant to Rule

[redacted]

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

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	)	
and	)	
	)	
American Home Products Corporation	)	

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

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.

[redacted]

development. The document also contains sensitive research funding and payment

information. Finally, the agreement contains a [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

disclosure of its terms

[redacted]

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.

[redacted]

III. ARGUMENT

A. Legal Standard For *In Camera* Treatment

Pursuant to Rule 3.45, a party may obtain *in camera* treatment for materials 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 six factors that are relevant to a determination of secrecy and materiality: (1) the extent to which the information is known outside of the movant's business; (2) the extent to

B. The Documents At Issue Relating To Schering's Pipeline Products

for Buspirone tablets)).

[redacted]

IV. CONCLUSION

For the foregoing reasons, Schering respectfully requests that the Court grant the

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418, SPX-420, SPX-422 to SPX-428, SPX-430 to SPX-433, SPX-435 to SPX-438, SPX-

[redacted]

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 currently under

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

d. Exhibit SDX-440 shows the stages of the [redacted]

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

[redacted]

Schering, only by top management and those parties working directly on the products'

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

[redacted]