

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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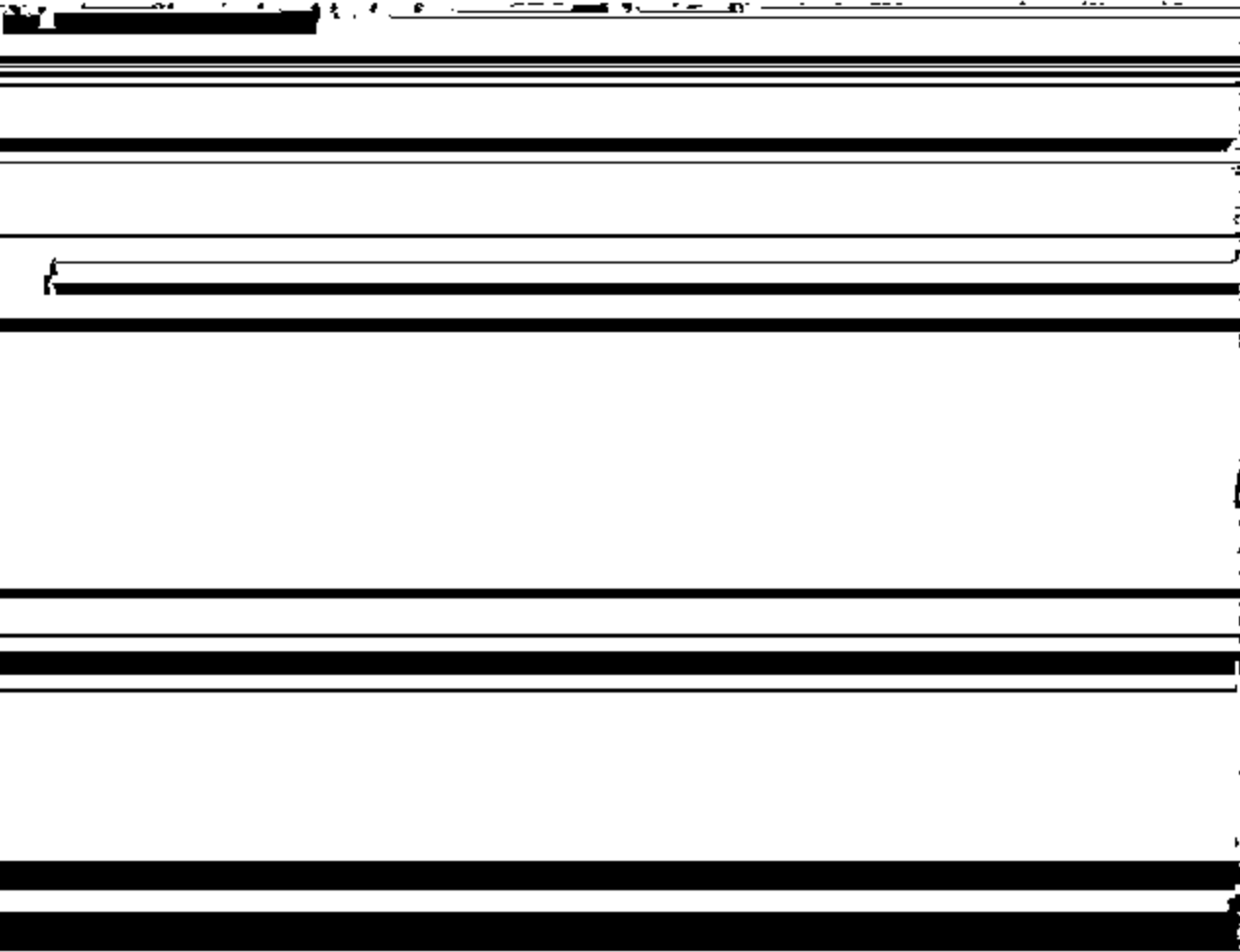
[Redacted]

Upsher-Smith's case in this proceeding and thus satisfies the conditions under Rule 3.34(a)(2)

for the issuance of a subpoena. The Court finds that the information sought is relevant and material to the

dispute, was worth more to Schering than the license fees Schering had negotiated to pay to Upsher-Smith.

Mr. Morley is a former member of the Schering Board of Directors and was a member of the Board in 1997 when the Board approved the license agreement between Schering and Upsher-Smith. Mr. Morely has a Ph.D. in physical chemistry, was the director of development



Upsher-Smith. Ms. Russo is the President and Chief Operating Officer of Eastman Kodak Company. We expect she will testify regarding the Schering Board of Directors approval of the license agreement between the Respondents. We further expect she will testify as to the Board's conclusion that the license agreement for the six pharmaceutical products, standing on its own merits separate and apart from Schering and Upsher-Smith's agreement to settle the patent dispute, was worth more to Schering than the license fees Schering had negotiated to pay to Upsher-Smith.

Mr. Schreyer was a member of the Schering Board of Directors in 1997 when the Board

CONCLUSION

For the foregoing reasons Upsher-Smith thus respectfully requests that its motion be granted in all respects.

Dated: January 14, 2002

Respectfully submitted,

WHITE & CASE LLP

By: 

Robert D. Paul

J. Mark Gidley

Christopher M. Curran

Peter J. Carney

601 Thirteenth Street, N.W.

Washington, D.C. 20005-3807

Telephone: (202) 626-3600

Facsimile: (202) 639-9355

Attorneys for Upsher-Smith Laboratories, Inc.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
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Schering-Plough Corporation,)
a corporation,)

Upsher-Smith Laboratories, Inc.,)
a corporation,)

and)
)

American Home Products Corporation,)
a corporation.)

Docket No. 9297
PUBLIC

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

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