

DAIMLERCHRYSLER

NHTSA
WASHINGTON, DC 20590

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DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

July 18, 2006

Mr. Stephen P. Wood
Acting Chief Counsel
National Highway Traffic Safety Administration
400 Seventh Street, S.W., Rm. 5219
Washington, D.C. 20590

Re: Request for Confidential Treatment for Information Provided in RQ06-006/NSV-212
MBS

Dear Mr. Wood:

Attached to this letter is a CD ROM disc containing the full response of DaimlerChrysler Corporation ("DCC") to an information request relating to the above-referenced matter. The disc includes a file labeled "Enclosure 10-Confidential docs" that contains confidential information.¹ As described in further detail below, the confidential information consists of analyses performed on DCC's behalf by Siemens VDO Automotive Electronics Corporation ("Siemens VDO") and Freescale Semiconductor, Inc. ("Freescale"). Pursuant to 49 C.F.R. Part 512, DCC is hereby requesting confidential treatment of the confidential information.

As required by Part 512, DCC is submitting certificates executed by responsible DCC, Siemens VDO, and Freescale personnel. The information required by Part 512 is set forth below.

A. Description of the Information (49 C.F.R. § 512.8(a))

The information for which confidential treatment is being sought consists of highly confidential analyses of certain conditions ("smoke, fire or melting of the instrument cluster") for subject components ("the C293 capacitor/instrument cluster circuit board") in MY 2004-2005 Dodge Durango sport utility vehicles manufactured for sale or lease in the United States. Design information relating to the subject instrument cluster circuit boards also is included in the material for which confidential treatment is being sought. This information was provided to DCC by Siemens VDO. DCC, Siemens VDO, and Freescale have maintained the confidentiality of the information and have not disseminated it publicly.

¹ DCC has taken steps to assure that the CD is free of any errors or defects that would prevent NHTSA from opening each file on the disc. If, however, the agency is unable to open any of the files, DCC respectfully requests that the agency inform DCC of the issue, so that DCC may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional.

B. Confidentiality Standard (49 C.F.R. § 512.8(b))

The confidentiality standard applicable to this request is the substantial-competitive-harm standard (49 C.F.R. § 512.15(b)) for information that must be submitted to the agency.

C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))

Under 49 C.F.R. § 512.15(b) and Exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4), information should be withheld from public disclosure if its release would be likely to cause substantial competitive harm to the submitter. *See also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). FOIA Exemption 4 was enacted to prevent disclosures that would “eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter’s] product.” *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999). In addition, FOIA Exemption 4 was enacted to prevent open records requirements from providing windfalls to competitors when private submitters have provided commercial or financial information to the government: “Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA’s principal aim of promoting openness in government.” *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981). Among the competitively-significant disclosures that FOIA Exemption 4 was enacted to prevent were disclosures that would reveal a firm’s “operational strengths and weaknesses” to competitors. *See National Parks & Conservation Ass’n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). The analyses at issue here satisfy the requirements for protection under these standards.

The Freescale analyses consist of three reports prepared at Siemens VDO’s request to analyze suspected circuit board failures. The reports provide step-by-step accounts of Freescale’s procedures for analyzing circuit board failures, and they disclose the results of the analyses. The disclosure of these reports would assist Freescale’s competitors in undertaking their own failure analyses. Such a disclosure therefore would constitute an uncompensated transfer of Freescale’s valuable intellectual property, causing Freescale substantial competitive harm. In addition, the disclosure of the information would provide insights into Freescale’s operational capacities. For these reasons, the information should be protected under the standards described above.

The three Siemens VDO documents also merit confidential treatment. The Siemens VDO documents consist of a Field Returns Analysis Report (Bates Nos. 5000001-5000005) and two diagrams of the subject circuit board (Bates Nos. 5000006-5000007).

The Siemens VDO Field Returns Analysis Report summarizes the findings of other analyses and provides detailed layouts of the circuit board. The report details the type of analyses that were undertaken, including a summary and the results of the tests that were performed. The report also states several respects in which analyses and certain corrective actions were limited by technical issues. Thus, the Siemens VDO analysis provides a roadmap of the type of analyses that Siemens VDO performs when undertaking product evaluations and failure analyses, and it

reveals competitively valuable information about Siemens VDO's operational capacities, as well as its processes of analysis, product testing methodologies, conclusions, and product design information.

The Siemens VDO diagrams provide design and diagnostic information regarding the circuit board and the issues under study. The diagram numbered 5000006 provides highly detailed design information about the circuit board that, if disclosed, would enable competitors to replicate the circuit board without putting forth the time and expense typically required for such efforts. In addition, when combined with other potentially-disclosed information, the diagram numbered 5000007 could be used to discern competitively-valuable information about the circuit board, including information that might permit the reverse-engineering of the board. Thus, these documents also satisfy the requirements for protection under Part 512 and FOIA Exemption 4.

D. Class Determination (49 C.F.R. § 512.8(d))

The information for which confidential treatment is being sought does not come within a class determination.

E. Duration For Which Confidential Treatment Is Sought (49 C.F.R. § 512.8(e))

Siemens VDO requests that its information be accorded confidential treatment for a period of ten years. Freescale requests that the information be accorded confidential treatment for an indefinite period.

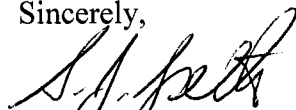
F. Contact Information (49 C.F.R. § 512.8(f))

Please direct all inquiries and responses to the undersigned at the address, telephone number, and email address shown on the first page of this letter.

* * *

If you receive a request for disclosure of the information for which confidential treatment is being sought before you have completed your review of our request, DCC respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,


Stephan J. Speth

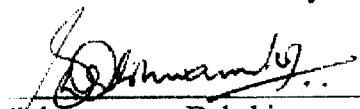
cc: Thomas Z. Cooper
Enclosures

Certificate in Support of Request for Confidentiality

I, Subramanyan Dakshinamoorthy, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am Subramanyan Dakshinamoorthy, Vice President – Quality Assurance, Freescale Semiconductor, Inc. (“Freescale”), and I am authorized by Freescale to execute documents on its behalf;
- (2) I certify that the information contained in the attached documents is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4);
- (3) I hereby request that the information contained in the indicated documents be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible Freescale personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside Freescale;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Freescale has claimed confidential treatment has never been released or become available outside Freescale, except to DaimlerChrysler and certain contractors of Freescale and/or DaimlerChrysler, including but not limited to Siemens VDO Automotive Electronics Corporation and its affiliated entities, with the understanding that such information must be maintained in strict confidence;
- (6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside Freescale because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 30th day of June, 2006

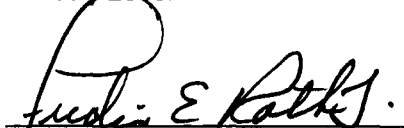


Subramanyan Dakshinamoorthy
Vice President – Quality Assurance
Freescale Semiconductor, Inc.

**CERTIFICATE IN SUPPORT OF REQUEST
FOR CONFIDENTIALITY**

I, Fredric E. Roth, Jr., pursuant to the provisions of 49 CFR Part 512, state as follows:

1. I am the Corporate Secretary for Siemens VDO Automotive Electronics Corporation ("Siemens VDO"), and I am authorized by Siemens VDO to execute documents of this nature on behalf of Siemens VDO.
2. Based upon the information available to me, it is my understanding that DaimlerChrysler Corporation is submitting three (3) Siemens VDO documents in relation to NHTSA Action Number RQ06006. The referenced documents contain Siemens VDO trade secrets and confidential and proprietary data, and are submitted with the claim that it is entitled to confidential treatment under 5 U.S.C., § 552(b)(4). These documents contain information and data related to Siemens VDO's processes of analysis, product testing methodologies, conclusions, and product design. Accordingly, the documents should be afforded confidential treatment on the ground that they constitute confidential business information, which if disclosed would likely cause substantial competitive harm to Siemens VDO. Disclosure of this information to competitors would reduce or eliminate the time and resources necessary for Siemens VDO competitors to bring competing products to the market.
3. I hereby request that the information contained in those documents be protected for a period of Ten (10) Years.
4. A member of my staff has inquired of the responsible Siemens VDO personnel who have authority in the normal course of business to release the type of information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside Siemens VDO.
5. Based upon such inquiries, to the best of my knowledge, information and belief, the information for which DaimlerChrysler Corporation and Siemens VDO have claimed confidential treatment has never been released or become available outside Siemens VDO except as hereinafter specified:
 - Portions of these documents may have been or may be shared with DaimlerChrysler Corporation and/or other customers or suppliers of Siemens VDO with the expectation that they will be kept confidential.
 - During the course of defending itself in litigation, Siemens VDO and/or DaimlerChrysler Corporation may have been, or may be required to produce such information.
6. I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside Siemens VDO because of unauthorized or inadvertent disclosure, except as stated in Paragraph 5.
7. I certify under penalty of perjury that the foregoing is true and correct. Executed on this the 7th day of July 2006.


Fredric E. Roth, Jr.
Corporate Secretary