

Stephen E. Selander
Selander Law Office, PLLC
410 W. University Drive, Suite 200
Rochester, MI 48307

DEC 10 2009

Re: Request for Reconsideration of Confidentiality Determination/PE08-001

Dear Mr. Selander:

This responds to your April 6, 2009, letter requesting reconsideration of a March 10, 2009, denial of your April 28, 2008, request for confidential treatment for IEE Sensing, Inc. (IEE) materials submitted in response to an agency information request (IR) in the above investigation. The agency's March 10, 2009, letter denied confidential treatment because IEE did not enclose a copy of the materials encompassed by its request. IEE asserts that the materials were provided by another manufacturer (BMW or Continental Corporation) in an earlier IR response, but this was not apparent in IEE's April 28, 2009, request.

Your reconsideration request, which now includes the materials encompassed by the original denied request, consists of three documents, one of which contains the results of tests and analyses designed to evaluate the occupant classification seat sensing system. You state that the second and third documents, two halves of one PowerPoint presentation, contain criteria that IEE used to evaluate issues related to the sensing system, and that this PowerPoint presentation was granted confidentiality as part of a previous request submitted by Continental Corporation. You contend that release of these documents would be likely to cause IEE to suffer substantial competitive harm.

I am granting your request.

Because IEE now has provided the materials encompassed by the request, I turn to the merits of your request. IEE submitted the information at issue in response to an agency information request. Since IEE was required to submit this information, your claim for confidential treatment was reviewed under the test set forth in *National Parks & Conservation Ass'n v. Morton*, 49 F.2d 765 (D.C. Cir. 1974) and its progeny. Under the *National Parks* decision, information concerning a commercial or financial matter may

be withheld under Exemption 4 of the Freedom of Information Act (FOIA) if disclosure of the information would be likely to cause substantial competitive harm to the competitive position of the submitter, or to impair the Government's ability to obtain necessary information in the future. *Id.* at 770.

Examination of this material indicates that release of the information within those documents would be likely to cause IEE to suffer substantial competitive harm. Therefore, I am granting your request for confidential treatment.

This grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR § 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information. 49 CFR § 512.10. If necessary, you will be notified prior to the release of any information under the procedures established by our regulations. 49 CFR § 512.22(b).

Sincerely,

Original Signed By

O. Kevin Vincent
Chief Counsel

