



DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

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Memorandum of Understanding
between the
Financial Crimes Enforcement Network
and the
National Counterterrorism Center

This Memorandum of Understanding (the "MOU") is between the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the U.S. Department of the Treasury, and the National Counterterrorism Center ("NCTC"). This MOU states the terms under which NCTC participates in the program that FinCEN maintains to permit qualifying organizations to obtain direct electronic access to information collected pursuant to the reporting authority contained in the Bank Secrecy Act (the "BSA"), 31 U.S.C. § 5311 *et seq.*

1. BSA Information. This MOU concerns access to "BSA Information," which consists of the following information when NCTC obtains that information directly from the (b)(3) or by bulk transfer of BSA Information:

(a) Information contained in reports filed with FinCEN pursuant to its authority under the BSA, including the following categories of reports, any successors to such categories of reports, and such other categories of reports as FinCEN may make available in the future:

- i) (b)(3)
- ii) (b)(3)
- iii) (b)(3)

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- iv) [REDACTED] (b)(3)
- v) [REDACTED] (b)(3)
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- vi) [REDACTED] (b)(3)
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- vii) [REDACTED] (b)(3)
- viii) [REDACTED] (b)(3)
- ix) [REDACTED] (b)(3)
[REDACTED] (b)(3)
- x) [REDACTED] (b)(3)
[REDACTED] (b)(3)
- xi) [REDACTED] (b)(3)
[REDACTED] (b)(3)

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(b) Information concerning whether any particular person or transaction is named or referred to in any report covered by Section 1(a), and if so, information concerning the specific form or type of form in which such person or transaction is named or referred to. Whether the results of a query are a null set or identify specific individuals as being named in one or more reports in (b)(3) the query results constitute BSA Information subject to this MOU.

2. Access to BSA Information: Limitations.

(a) Purpose. Authorized personnel of NCTC ("Authorized NCTC Personnel"), solely on behalf of NCTC (including in NCTC's capacity as a participant in a multi-agency task force if applicable) and not on the behalf of any other person (including without limitation any other federal, state or local agency for non-NCTC purposes), may make queries to retrieve BSA Information, either directly from (b)(3) or from the BSA Information that FinCEN provides to NCTC through a bulk download, and may use BSA Information obtained from any such queries: (1) consistent with NCTC's legal authority as described in the National Security Act of 1947, as amended, Executive Order 13354 and the Intelligence Reform and Terrorism Prevention Act of 2004, and the Memorandum of Agreement between the Attorney General and the Director of National Intelligence, issued pursuant to section 102A of the National Security Act of 1947, as amended; and (2) for the purpose of conducting of intelligence or counterintelligence, including analysis, to protect against international terrorism, as set forth in the BSA, as amended. See 31 U.S.C. 5311, 5318 and 5319. NCTC's authority to receive and use bulk datasets that may contain large amounts of U.S. person information is explained in greater detail in section 2(g). NCTC understands that due to technological constraints, the system for providing NCTC with (b)(3) access to BSA Information is unable to support classified queries.

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(b) Search Limitations. In general, Authorized NCTC Personnel shall make best efforts to limit the BSA Information they obtain through a query to that BSA Information which is immediately useful in connection with the specific matter prompting the query. Best efforts in this context include, but are not limited to, the use of as much information as is reasonably available to Authorized NCTC Personnel in framing and narrowing any query.

- i) In addition to the limitations contained elsewhere in this Section 2(b), Authorized NCTC Personnel, when making queries concerning specific persons or entities (each a "Subject"), shall use identifying information in order to eliminate insofar as possible the retrieval of information not relating to the Subject.
- ii) NCTC will make best efforts to obtain and maintain from (b)(3) only that BSA Information which is of value in connection with the specific matter prompting the query through which the BSA Information was obtained. NCTC will promptly destroy all documents or summaries that it has obtained or generated from (b)(3) which contain BSA Information that is (A) known to have been obtained in error, or (B) duplicative of BSA Information already obtained by NCTC and reasonably accessible to NCTC.
- iii) In addition to the limitations contained elsewhere in this Section 2(b), Authorized NCTC Personnel shall make best efforts to obtain approval from FinCEN in advance before copying BSA Information into a format that can be accessed outside of (b)(3) (other than the initial NCTC database that will house BSA Information that NCTC receives by bulk transfer and one other NCTC database that will house BSA Information that NCTC has determined has a terrorism nexus), when such copy will

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contain or consist of 5000 or more unique reports covered by Section 1(a) or substantially all of the information contained in such reports. The approval described herein is required whether such copy is an electronic file containing images of the reports, an electronic file containing BSA Information in spreadsheet form, a printed document, or a copy in any other format or medium. In the event obtaining prior approval is impractical, Authorized NCTC Personnel shall notify FinCEN before the end of the first business day after the copying of records as described in this paragraph. Approval will be required whether such copy is an electronic file containing images of the reports, an electronic file containing BSA Information in spreadsheet form, a printed document, or a copy in any other format or medium. The purpose of this limitation is to protect BSA Information from being stored outside of the (b)(3) other than as necessary under the terms of this MOU. Any BSA Information stored outside of the (b)(3), whether consisting of 5000 or more reports or not, shall be subject to the terms of this MOU, including, but not limited to, the provisions relating to auditing and re-dissemination.

(c) FinCEN Search Targeting Resources. FinCEN will use its best efforts to make available to NCTC, from time to time, either on FinCEN's own initiative or in response to requests from NCTC, analytical tools and BSA Information reviews (collectively "Analytical Materials") intended to help Authorized NCTC Personnel use (b)(3) efficiently, maximize the value of BSA Information they obtain through queries, and minimize obtaining BSA Information of little or no value in connection with the specific matters prompting queries. NCTC will ensure that Authorized NCTC Personnel (i) are promptly made aware of NCTC's receipt of

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Analytical Materials and (ii) use Analytical Materials to the fullest extent possible in making queries and evaluating BSA Information obtained through (b)(3)

(d) Discretionary Conditions of Access. In addition to the terms, conditions and limitations stated elsewhere in this MOU, FinCEN may, impose one or more conditions of access to (b)(3) including but not limited to possible requirements that Authorized NCTC Personnel (i) enter into individual user agreements acknowledging the terms and conditions under which they can obtain access to (b)(3), and/or (ii) begin (b)(3) queries of BSA Information pursuant to this MOU with the full completion of (b)(3) computer access screens (the "Access Screens") for the relevant data file, before obtaining access to BSA Information. If any condition of access is imposed, no information may be retrieved from any data file hereunder unless such condition of access has been complied with.

(e) Continuing Representation and Warranty. Each query under this MOU, including if applicable completion of any Access Screen in connection with such query, shall be deemed to constitute a continuing representation and warranty by NCTC that the request for retrieval or use complies with, and any use of retrieved or analyzed information will comply with, the terms of this MOU and applicable laws Executive Orders, regulations and directives

(f) Disclaimer of Liability. FinCEN will make all reasonable efforts to make BSA Information available to NCTC upon NCTC's request, consistent with the terms of this MOU. However, FinCEN expressly disclaims any liability for any consequence of the non-availability of BSA Information through (b)(3) for whatever reason.

(g) Bulk Transfer of BSA Information. In addition to (b)(3) access to BSA Information, FinCEN will provide a bulk transfer to NCTC of BSA Information. Upon signature

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of this MOU, FinCEN will provide NCTC a three-month tranche of sample data with schema to provide NCTC with an overview of how bulk data is provided so they may make any internal changes to NCTC systems that are necessary to receive it. FinCEN will thereafter provide an initial bulk transfer of historical data followed by periodic updates. FinCEN will make best efforts to ensure that updates are provided on a monthly basis.

- 1) (U//FOUO) NCTC's analytic and integration efforts concerning terrorism and counterterrorism, as well as its role as the central and shared knowledge bank for known and suspected terrorists require it to have access and review datasets that are identified as including non-terrorism information and information pertaining exclusively to domestic terrorism in order to identify and obtain terrorism information. This includes information pertaining to U.S. person information. Thus, pursuant to the National Security Act of 1947, as amended, and Executive Order 13388, NCTC is authorized to access and review such datasets, to include those that contain U.S. person information. This authority is implemented in the Memorandum of Agreement between the Attorney General and the Director of National Intelligence, issued pursuant to section 102A of the National Security Act of 1947, as amended. That agreement provides not only the authority for NCTC to access information that is contained within datasets that are identified as including non-terrorism information and information pertaining exclusively to domestic terrorism, but also establishes restrictions regarding the use, protections, and dissemination of such information.

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- ii) (U//FOUO) The bulk transfers will be used for authorized NCTC analytic purposes which include threat stream and all source analysis, Terrorist Identities Datamart Environment (TIDE) enhancement, and comparison with the (b)(3) and other identity resolution tools for any counterterrorism nexus.
- iii) (U//FOUO) NCTC intends to enhance TIDE records with information contained in the BSA reports. NCTC will update TIDE holdings when BSA information provides new or updated data on known or suspected terrorists. To the extent that it provides data on known or suspected terrorist identities not already included in TIDE, NCTC will use this data to create a new TIDE identity. TIDE exports are prepared and passed on to the Terrorist Screening Center for watchlisting purposes.
- iv) (U//FOUO) NCTC is creating an index of selected counterterrorism data elements on known and suspected terrorists and terrorist activity extracted from intelligence community data sets. The index, known as (b)(3), will become the basis against which any data set available to the United States Government, including BSA data, will be compared, establishing an appropriate counterterrorism nexus. This effort was approved by the White House Counterterrorism Security Group on March 31, 2008.
- v) (U//FOUO) If a comparison between the BSA data and the (b)(3) index reveals a match, an (b)(3) analyst will review that record to determine that it is accurate and contains a nexus to terrorism. These records

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will be used for CT analysis, to enhance existing records in the TIDE database, and to alert others for watchlisting and screening. Only records containing a match for terrorism information will be flagged by (b)(3) for further evaluation. Non-matching data will not be added to the (b)(3)

- vi) (U//FOUO) In addition, threat stream and all-source analysis are key NCTC missions. Analysts perform all-source analysis for inclusion in a variety of finished intelligence products, some of which are extremely sensitive. Designated primary analysts have full access to data sources based on their areas of responsibility at NCTC. Additionally, non-U.S. person data contained in the bulk data transfer will be retained and used by analysts conducting terrorism-related analytic research. A select group of NCTC's all-source analysts will screen BSA data against NCTC holdings of information relating to known or suspected terrorists with the objective of identifying persons with a previously undetected nexus to terrorism.

3. Re-dissemination of Information Derived from a BSA Report. Information derived from a BSA Report, including, but not limited to, information revealing the existence of a BSA Report may be disseminated by NCTC to a domestic agency outside NCTC without FinCEN's prior approval if the dissemination would further a permissible purpose underlying the initial query of BSA Information, as set forth in section 2 of this MOU, and as consistent with NCTC's authorities. In such an instance, FinCEN prior approval is not necessary so long as the NCTC abides by the following conditions:

- (a) NCTC must record and maintain an audit trail of any such dissemination;

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- (b) NCTC must include FinCEN's Office of Intelligence Support (OIS) on the distribution line of any report written that contains BSA information;
- (c) NCTC must cite the kind of BSA Report (b)(3) that the information was derived from;
- (d) Each such dissemination must include the BSA warning language attached at Tab A; and
- (e) NCTC must explicitly provide to the recipient an explanation as to how dissemination of the information may further a counterterrorism purpose.

4. Information about Inquiries of the NCTC. FinCEN may maintain as part of its internal databases information concerning (b)(3) queries made by NCTC, including without limitation (i) information contained on the Access Screens completed by Authorized NCTC Personnel hereunder, if applicable, and (ii) a record of the information in the relevant data files searched, retrieved, or both, by such Authorized NCTC Personnel using (b)(3). NCTC will separately maintain a record of data retrieved from queries made of bulk data.

5. Networking. FinCEN seeks to facilitate networking among agencies that may be investigating the same matters. However, the inherent sensitive nature of counterterrorism queries may often preclude the release of information pertaining to NCTC queries to other entities. If the Subject of a query under this MOU has been or subsequently becomes the Subject of another query to FinCEN by another entity, FinCEN at its discretion and without obtaining prior permission may concurrently notify the entities making the two queries concerning the match of information about the two queries, provided that (i) such concurrent notification will involve only the name of the Subject queried, sufficient additional information about the Subject

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to demonstrate the fact of the match, and information about relevant officials to contact at the two entities, and (ii) no concurrent notification of a match will be made in a particular case to the extent that the Access Screen completed by either relevant entity with respect to that case is specifically marked to indicate the entity's decision not to permit concurrent notification due to the sensitive nature of the query involved. As the financial intelligence unit ("FIU") of the United States and the representative of the United States to the Egmont Group, an organization of national FIUs committed to the exchange of information relevant to anti-money laundering and counter-terrorist financing investigations, FinCEN may also, at its discretion but subject to provisions (i) and (ii) of the previous sentence, concurrently notify NCTC and any foreign FIU when there is a match of information between a query by NCTC and a query by the foreign FIU.

6. Audit Trail and Reports.

(a) NCTC shall ensure that an audit trail is maintained with respect to its compliance with this MOU. Such audit trail shall allow an appropriate auditing component of or for NCTC to verify that NCTC's access and use of BSA Information is consistent with the terms of this MOU. In addition, NCTC shall ensure that an audit to verify that BSA Information has been accessed and used appropriately is conducted no less than twice a year, and shall further provide FinCEN with written confirmation of any such audit and any derogatory information uncovered by any such audit.

(b) NCTC also may make reports to FinCEN, at its option or at the request of FinCEN, to assist FinCEN in understanding and analyzing the value of BSA Information.

7. Security.

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(a) NCTC agrees to follow the steps outlined in the Security Plan attached to this MOU at Tab B, such Security Plan may be amended by FinCEN from time to time. NCTC will supply FinCEN with the names of all Authorized NCTC Personnel, together with any additional identifying information for such individuals as FinCEN shall require, for the purposes of controlling and monitoring access to BSA Information and observance of the terms of this MOU. All Authorized NCTC Personnel shall have been the subject of a satisfactory background investigation completed in accordance with NCTC's policies. At FinCEN's discretion, Authorized NCTC Personnel may not be eligible for access to (b)(3) until after they have been trained by FinCEN concerning the use of (b)(3) the data files containing BSA Information, and compliance with the terms of this MOU.

(b) The NCTC shall notify FinCEN when it revokes access privileges under this MOU of Authorized NCTC Personnel, including but not limited to (i) revocations of access privileges associated with routine personnel actions such as retirement or other changes in employment status, and (ii) revocations of access privileges associated with non-routine disciplinary action.

(c) NCTC shall notify FinCEN immediately if the Center (i) imposes sanctions upon any Authorized NCTC Personnel or (ii) discovers any unauthorized use of or access to BSA Information, whether by Authorized NCTC Personnel or otherwise.

8. Training. FinCEN will train, as resources permit, Authorized NCTC Personnel in the use of (b)(3) the data files containing BSA Information, and compliance with the terms of this MOU.

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9. Control of Records: Open Information and Privacy Laws. Information obtained from any data file pursuant to this MOU in the custody of NCTC will be deemed to constitute a record under the control of FinCEN for purposes of (i) the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, (ii) the Privacy Act, 5 U.S.C. § 552a, (iii) any other laws, regulations and policies applicable to the sources, use, disclosure or dissemination of BSA Information in the custody of the Center (collectively, "Other Open Information and Privacy Laws"), and (iv) any requests or demands for BSA Information made to NCTC, whether or not such requests or demands are made consistent with FOIA, the Privacy Act, or Other Open Information and Privacy Laws. NCTC represents that it does not know of any Other Open Information and Privacy Laws in force on the date of this MOU that grant any right of access to BSA Information in the custody of NCTC on the part of any person that is greater than the rights granted to such persons under FOIA, the Privacy Act and this MOU. NCTC will inform FinCEN within ten (10) business days after NCTC becomes aware of the possibility that any new or existing Other Open Information and Privacy Laws will grant any such greater right of access. To the fullest extent permitted under law, NCTC will notify FinCEN's Office of Chief Counsel if NCTC is served with a subpoena or other request for BSA Information obtained by NCTC hereunder.

10. Costs. NCTC is responsible for costs to NCTC that may arise in connection with its compliance with this MOU, its use of BSA Information consistent with this MOU, and its receipt of training as contemplated by this MOU, including but not limited to travel expenses of Authorized NCTC Personnel for the purpose of receiving training. FinCEN imposes no charges for access of Authorized NCTC Personnel to BSA Information hereunder and no charges with respect to the travel expenses of FinCEN personnel for the purposes of exercising

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FinCEN's inspection rights or providing training as contemplated by this MOU. Should FinCEN determine the need for a payment by NCTC of a fee that reflects equitable cost-sharing arrangements between FinCEN and NCTC to access BSA Information at some future date, a new MOU will be drafted to reflect such payment agreement.

11. Authority to Sign; Effective Date; Termination. The persons identified below as signing on behalf of FinCEN and NCTC have the authority to commit FinCEN and NCTC to the undertakings contained in this MOU for the period during which this MOU is effective. This MOU shall become effective as of the first Monday immediately following the date on which it is signed on behalf of FinCEN (the "Effective Date"). This MOU may be terminated by either party upon written notice to the other, effective 30 days from the date that notice of termination is sent (the "Termination Date"). NCTC's access rights to BSA Information under this MOU will terminate on the Termination Date. FinCEN reserves the right without notice to suspend NCTC access to data files containing BSA Information if, in FinCEN's discretion, such suspension is necessary for reasons of security or for failure to observe the terms of this MOU. FinCEN will notify NCTC of any suspension within 48 hours of such action. Any such suspension does not constitute notice of termination of this MOU.

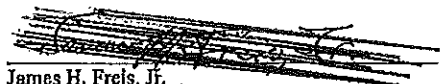
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Accepted and agreed to:

FINANCIAL CRIMES ENFORCEMENT NETWORK

By:



James H. Freis, Jr.
Director

Date: *March 19, 2010*

NATIONAL COUNTERTERRORISM CENTER

By:



Russell Travers
Deputy Director, Information Sharing and Knowledge Development
National Counterterrorism Center

Date: *11 MAR 2010*

Attachments:

Tab A: BSA Warning Language
Tab B: Security Plan

WARNING STATEMENT TO BE AFFIXED TO BSA
REPORT INFORMATION DISCLOSED TO OTHER AGENCIES

The enclosed information was collected and disseminated under provisions of the Bank Secrecy Act (the BSA) and U.S. Department of the Treasury regulations implementing the BSA. See 31 U.S.C. 5311, et seq.; 31 CFR Part 103. The information is sensitive in nature and is to be treated accordingly. The information may be used only for a purpose related to a criminal, tax, or regulatory investigation or proceeding, or in the conduct of intelligence or counterintelligence activities to protect against international terrorism, or for a national security matter. See 31 U.S.C. 5311. The information cannot be further released, disseminated, disclosed, or transmitted without prior approval of the Director of Financial Crimes Enforcement Network or his authorized delegate. Suspicious activity reports filed under the BSA must be treated with particular care given that they contain unsubstantiated allegations of possible criminal activity, akin to confidential informant tips. Such reports, or the fact they have been filed, may not be disclosed by a government employee to any person involved in the transaction, "other than as necessary to fulfill the official duties of such officer or employee." 31 U.S.C. 5318 (g)(2)(ii). Unauthorized release of information collected under the BSA may result in criminal or civil sanctions.

December 2007

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**BANK SECRECY ACT
INFORMATION ACCESS SECURITY PLAN**

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BANK SECRECY ACT
INFORMATION ACCESS SECURITY PLAN

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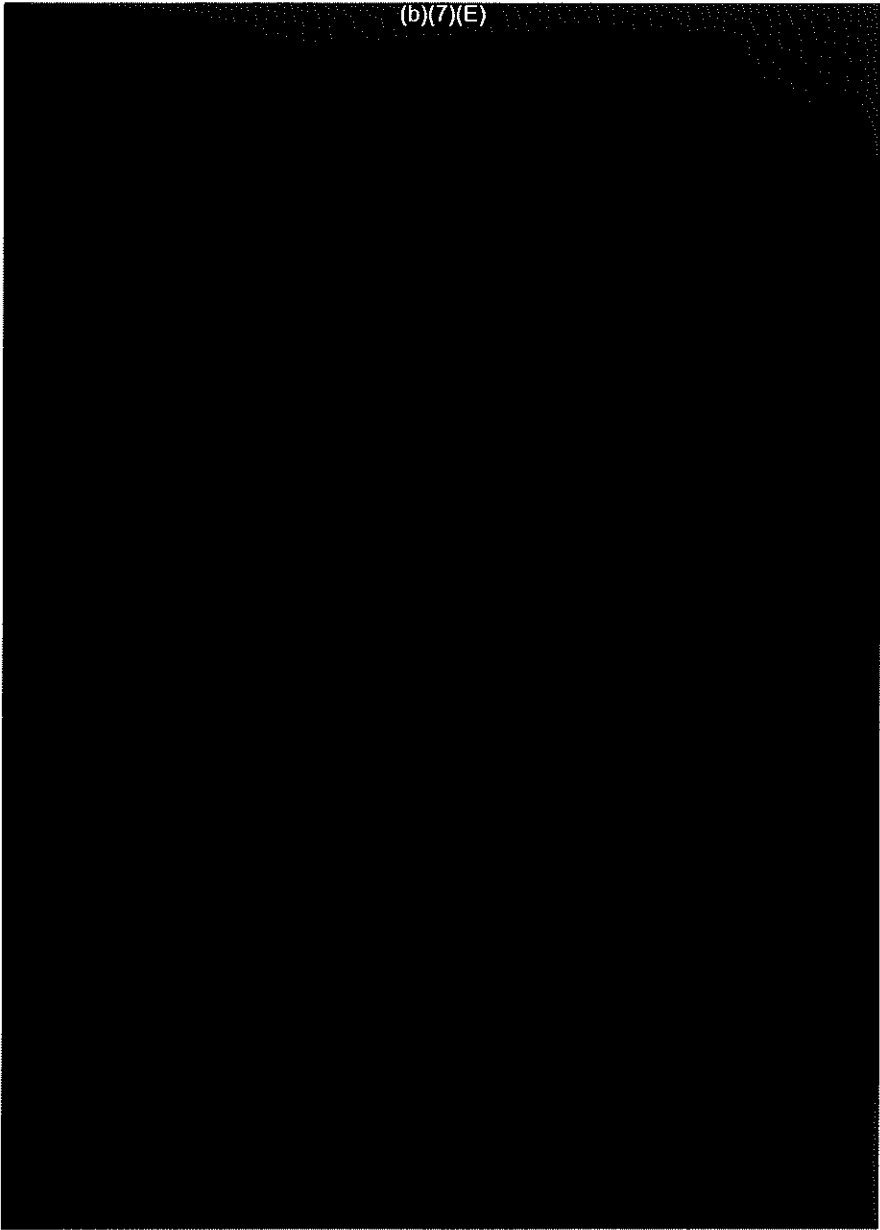
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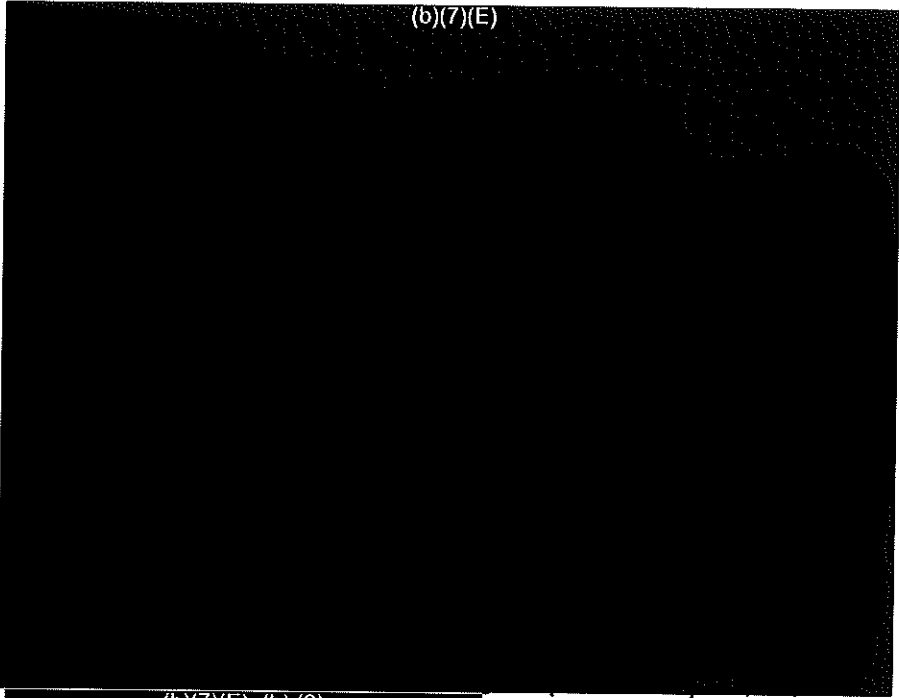
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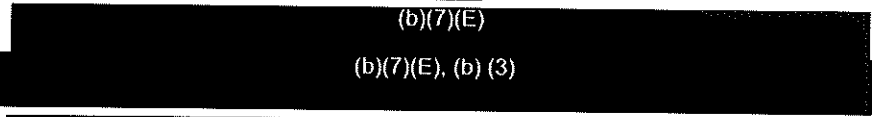
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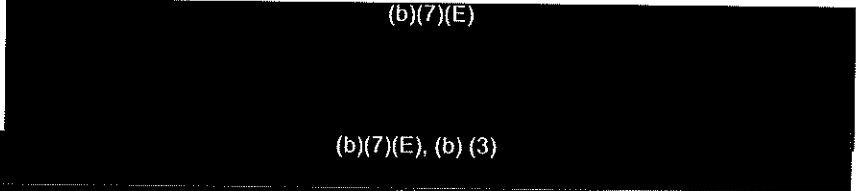


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