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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78145546 "LEXUS" Filed July 19, 2002

TOYOTA JIDOSHA KABUSHIKI KAISHA)
d/b/a TOYOTA MOTOR CORPORATION,)
and)
TOYOTA MOTOR SALES, U.S.A., INC.,)
)
Opposer,)
)
v.)
)
SYNGENTA PARTICIPATIONS AG)
Applicant.)

Opposition No. 157,206



11-28-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #78

**APPLICANT'S RESPONSE TO OPPOSERS' MOTION TO COMPEL APPLICANT'S
RESPONSES TO OPPOSERS' FIRST SET OF INTERROGATORIES AND FIRST
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Opposers have alleged that Applicant has refused to respond to Opposers' First Set of interrogatories and First Requests for Production of Documents and that Applicant's sole reason for this refusal is that Opposers "failed to timely respond to Applicant's discovery requests." This is partially correct and partially incorrect.

Despite receipt of Applicant's various discovery requests on two separate occasions (Ex. 1-2), the exchange of correspondence(Ex. 3), and a telephone discussion (Exhibits 4), Opposers have failed to give any indication to Applicant or this Board that any response by Opposers will ever be submitted. In their response to Applicant's Motion to Compel, which is the basis of Applicant's lack of production and response to date, there is absolutely nothing to indicate if and when Applicant will receive a response

to its discovery requests from Opposers. In fact, contained in their counsel's letter of September 22, 2003 (Ex. 3), there is a clear indication that no response will be made.

OPPOSERS' REFUSAL TO RESPOND

In their response, Opposers argue that TBMP 403.03 does not permit a party to avoid discovery production due to the other party's "failure to respond." However, this section does not address the situation where a party refuses to respond and further fails to indicate whether any response will be forthcoming or when.

It should be noted that Opposers have been aware of Applicant's intention to pursue this Application for a number of years and has corresponded with Applicant's counsel prior to the time of filing (Ex.5, letter dated Sept. 4, 2002) in preparation of the filing of their opposition. This was nearly a year before the opposition was filed.

Opposers were first made aware of Applicant's discovery requests on August 18th and again on Sept. 18th. Despite responses being due at the latest on or about Oct.18th, none have been forthcoming and none on Nov. 18th. There has not been any indication that a response will ever been submitted by Opposers. Therefore, Opposers, in addition to the extensive time prior to their filing in which to prepare, they have had over 90 days notice from Applicant's initial request, 60 days from the second request, and are now overdue by an additional 30 days from their acknowledgement of their 'misfiling' of Applicant's second request. No response to the discovery requests has been filed by Opposers.

Thus, the failure to file any response, even after discovery of the alleged 'misfiling' of the second service of Applicant's discovery requests, for any reason other

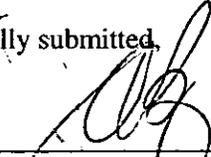
than an absolute refusal, seems incredible in light of the lengthy period of time that Opposers have had to prepare for their opposition

Finally, unlike Opposers who have refused to indicate when and if any response will be forthcoming, Applicant has agreed to respond to Opposers' requests upon receipt of their long overdue responses. Opposers have made no such representation and continue to refuse to do so. Thus, it is Opposers' actions which have caused the delays herein, not by their 'misfiling' (which is obviously a subterfuge) but by their absolute refusal.

WHEREFORE, Opposers' motion should be denied and Applicant's Motion to Compel granted.

Respectfully submitted,

By: _____

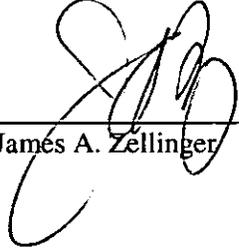

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ATTORNEY FOR APPLICANT

Date: November 25, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S RESPONSE TO OPPOSERS' MOTION TO COMPEL was served on counsel for Toyota Jidosha Kabushiki Kaisha this the 25 day of November, 2003, via first class mail, postage prepaid to:

David J. Kera
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11-28-2003

U.S. Patent & TMOs/TM Mail Rcot Dt. #78

Re: LEXUS; Serial No. 78/145,546
Opposition No. 157,206

Dear Sir or Madam:

Please find enclosed APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO COMPEL. Please file in conjunction with the above-captioned opposition.

Thank you for your assistance with this matter.

Very Truly Yours,

James A. Zellinger
Trademark Counsel

JAZ/sk
encl.