

II. Opposers' Request Lacks Support

Opposers, who, as the moving party(s), have the burden to establish a basis for their motion have failed to include any evidence or basis for consolidation other than the broad statement that there exists common questions of law and fact. This can be said of nearly any two opposition proceedings without any supporting allegations. Applicant submits that there is not a sufficient basis for consolidation and would oppose same. As discussed below, consolidation is not appropriate if there are different issues of law or fact Ahlstrom Corp. & Kamyr v. Gould Pump, Inc.et al., 1992 U.S. Dist. 14344 (1992).

Opposers have chosen to institute these two oppositions. Applicant submits that it will be seriously harmed by the consolidation of these proceedings as the primary issue (as discussed briefly below) in each opposition is different. While the detrimental effect upon Applicant is not the only factor to consider, the concerns of Opposers who have initiated these two oppositions should be given no weight. This is especially true in light of the obstructionistic tactics employed by Opposers to date in the earlier filed opposition.

II. Opposers' Dilatory Conduct

Opposers have actively delayed and obstructed the earlier and current opposition by failing to provide any discovery information that is now many months overdue. 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 to date (See Ex.1&2, attached hereto, Motion To Compel and Response of Applicant to Opposers' Motion To Compel). To date, 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 of the oppositions in which to prepare (over 16 months), they have had over 140 days notice from Applicant's initial request, 90 days from the second request, and are now overdue by an additional 60 days from their acknowledgement of their alleged 'misfiling' of Applicant's second notice of discovery requests. 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 and obviously will continue to cause delays especially if these oppositions are consolidated. Any delay was not due to their 'misfiling' (which is obviously a subterfuge and does not explain the vast delay) but by their absolute refusal.

This past conduct alone should serve as a valid basis to deny Opposers' request to consolidate.

III. Different Marks/Different Evidence

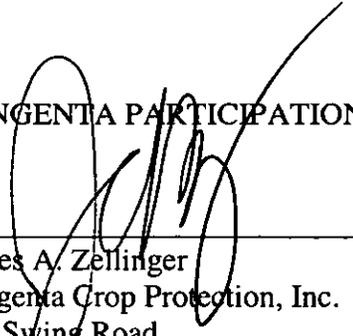
Opposers' basis for their oppositions as stated above is the alleged highly distinctiveness or fame of their marks. Yet the two marks are different. While sufficiently

close for a dispute concerning likelihood of confusion, the issue is far different under a dilution claim and when the spelling of the marks are different. If Opposers' mark in question, "LEXUS", is so famous as to confuse consumers with Applicant's mark (Lexus) for completely different goods, than it must be assumed that such fame and recognition would prevent said consumers from recognizing Applicant's other mark (Lexxus, spelled differently), as being associated with Opposers. The evidence required to establish claims to address the different marks would confuse and detract from the examination of the initial opposition if these oppositions were consolidated.

WHEREFORE, Opposers' motion should be denied its entirety.

Respectfully submitted,

SYNGENTA PARTICIPATIONS AG

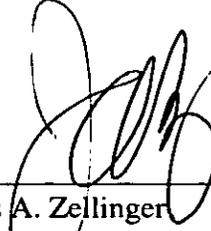
By: 
James A. Zellinger
Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, North Carolina 27409
Tele. 336-632-7835
Fax. 336-632-2012

CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing APPLICANT'S RESPONSE TO OPPOSER'S NOTICE OF OPPOSITION to the attorney of record as listed below by placing a copy of same in the U. S. Mail, properly addressed and postage prepaid, to:

David J. Kera
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

on this the 19th day of December, 2003.



James A. Zellinger
Syngenta Crop Protection Corp.
410 Swing Rd.
Greensboro, N.C. 27409

EXHIBIT 1

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,)
)
Opposer)
)
v.)
)
SYNGENTA PARTICIPATIONS AG)
)
Applicant.)


12-22-2003
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #78

APPLICANT'S MOTION TO COMPEL

Applicant, Syngenta Participations AG, moves to compel Opposer to respond to Applicant's discovery requests. (See Exhibits 1 and 2 attached hereto). Opposer filed the attached objections (Exhibits 3 and 4) and has failed to otherwise respond. Pursuant to 37 CFR 2.120(a), the opening of discovery is governed by the Federal Rules of Civil Procedure. Said Rules permit discovery upon filing an answer and also require a response (with an additional 15 days to respond) F.R.C.P. §26.

Nevertheless, Applicant re-served the discovery requests on September 18, 2003 (see attached certificate of service and letter, Exhibits 5 and 6, and Opposer's acknowledgment, Exhibit 7). No response has been made, and Opposer has stated its intention not to respond to Applicant's discovery requests of August 12 and September 18, 2003.

Wherefore, Opposer's failure to respond constitutes sufficient grounds for this Board to issue an order compelling Opposer to fully and completely respond to Applicant's discovery requests. (Exhibits 1 and 2).

Respectfully submitted,

By: _____
James A. Zellinger
Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, North Carolina 27409
(336) 632-7835
fax (336) 632-2012
ATTORNEY FOR APPLICANT

Date: October 20, 2003

EXHIBIT 2



James A. Zellinger
Trademark Counsel

Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, NC 27409

Tel 336-632-7835
Fax 336-632-2012
e-mail:
jim.zellinger@syngenta.com

October 20, 2003

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

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

Dear Sir or Madam:

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

Thank you for your assistance with this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "JAZ", with a horizontal line extending to the right.

James A. Zellinger
Trademark Counsel

JAZ/sk
encl.

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,)
)
Opposer)
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v.)
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SYNGENTA PARTICIPATIONS AG)
)
Applicant.)

APPLICANT'S MOTION TO COMPEL

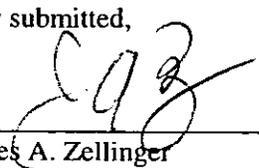
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Respectfully submitted,

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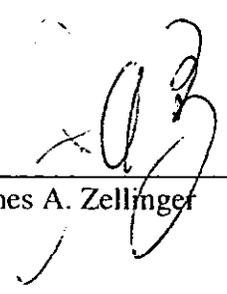

James A. Zellinger
Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, North Carolina 27409
(336) 632-7835
fax (336) 632-2012
ATTORNEY FOR APPLICANT

Date: October 20, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S MOTION TO COMPEL was served on counsel for Toyota Jidosha Kabushiki Kaisha this the 20 day of October, 2003, via first class mail, postage prepaid to:

David J. Kera
OBLON, SPIVAK, McCLELLAND
MAIER & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314



James A. Zellinger

“Opposer” or “Plaintiff” shall mean Toyota Jidosha Kabushiki Kaisha d/b/a Toyota Motor Corporation.

“Mark” or “Trademark” unless otherwise identified means the marks ‘LEXUS’ or ‘LEXXUS’, any similarity thereto, and any use including use with other marks or terms, or in conjunction with other words or terms.

“Document” or “documents” shall mean the original and any copy of any copy of any writing or record in the custody, possession or control of Toyota or Opposer or known to it, whether printed, recorded, reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged or exempt from production for any reason. Any comment or notation appearing on any document and not a part of the original text is to be considered a separate document.

“Person”, or “persons”, “entity”, or “entities” shall mean and include, in the plural as well as the singular, natural persons, proprietorships, corporations, governments, governmental agencies, associations and other organizations and entities, including all representatives of such persons.

“Packaging” shall mean any and all containers, labels, wrappings, descriptions, instructions, and all other materials transferred with the referenced goods during sale or distribution of the goods which are not part and parcel of the goods, whether or not said materials are visible during transfer of the goods.

“Oral communication” means and refers to any face-to-face conversation, meeting, conference, telephone conversation and telephone conference.

“Subject matter of this action” means and refers to the existence, consequences to the parties or third parties, rights adjudicated and conduct or status of this action.

“Third party” means and refers to any person, business or other entity not a party to the present lawsuit.

General Instructions

In multi-part interrogatories, the separate parts of such interrogatories are to be read in the context of the entire interrogatory but each part is to be answered separately.

A request to identify a person or entity shall be satisfied by providing the following information with respect to each said person or entity:

1. Said person's or entity's full name;
2. Said person's or entity's business address;
3. Said person's or entity's occupation;
4. Said person's or entity's employer;
5. Said person's or entity's citizenship.

If the person or entity identified is a corporation, further providing the following:

6. The date of incorporation of said corporation;
7. The state in which said corporation was incorporated;
8. The address of said corporation's principal office;
9. The name and address of each officer of said corporation;
10. The principal business of said corporation. If the identity identified is a

partnership, further provide the following:

11. The date the partnership was organized;
12. The name under which the partnership does business;
13. The name and address of each partner;
14. Whether a certificate for doing business under a fictitious name was filed

and, if so, the date and place each certificate was filed;

15. The principal business of said partnership.

A request to identify documents shall be satisfied by providing the following information with respect to each said document:

1. The type of said document;
2. The title of said document with sufficient particularity to enable identification of same;
3. The date thereof;
4. The date the document was executed, if different from the date it bears;
5. The name and address or, if unknown, last known address and telephone of each person to whom the document was addressed;
6. The name and address or, if unknown, last known address and telephone of each person who signed the document or over whose name it was issued;
7. The name and address or, if unknown, last known address and telephone number of each person who has possession or control of the document, or a copy thereof;
8. Whether you will voluntarily make the document available to applicant herein for inspection and copying (you may submit a copy of each such document with your answers to these interrogatories in lieu of identifying such documents).

Documents for which identification is sought which will not be produced by Opposer to Applicant for inspection and copying, pursuant to a request under Rule 34 of the Federal Rules of Civil Procedure, shall be identified fully in the manner set forth above; and if any document will not be produced because of a claim of privilege or work product, Opposer shall also state the basis for such claim. As to documents which will be

produced by Defendant to Plaintiff for inspection and copying pursuant to a request under Rule 34. Opposer only need provide sufficient identification to allow Applicant to frame a request for such documents with reasonable particularity.

A request to identify and describe oral communications shall be satisfied by providing the following information with respect to each communication:

1. The name and address or, if unknown, last known address and telephone number of each such person participating in such communications;
2. The name and address or, if unknown, last known address and telephone number of each such person present when said communication was made;
3. The place where such communication occurred;
4. The date of said communication;
5. The substance of what was said by each person who participated in said oral communication;
6. If any writing has been made that records, summarizes, reflects, relates or refers to the sum and substance of such communication or any part thereof, describe each writing in accordance with the instructions provided herein;
7. If any mechanical, magnetic or electrical recording has been made out of the communication, the name and address or, if unknown, last known address and telephone number of the person who has possession or control of the same, and state whether the recording is still in existence;
8. Describe each recording in accordance with the instructions provided herein; and
9. A request for identification of a person shall be satisfied by identifying the

person in accordance with the instructions provided herein.

If, after exercising due diligence to obtain the information requested, you cannot, or will not, answer any interrogatories fully and completely, whether because a privilege or otherwise, please:

- 1) State that your answer is complete;
- 2) Specify which part or parts of the interrogatory to which you are unable, or unwilling to respond;
- 3) State the facts and/or grounds upon which you rely to support your contention that you are unable and/or should not be compelled to answer completely;
- 4) State fully and completely the part or parts of the interrogatory to which you are able to respond;
- 5) State any information, knowledge or belief you have concerning the unanswered part or parts of such interrogatory.

This subparagraph (5) only, is not applicable to interrogatories not answered due to a claim of privilege.

Opposer's responses to the following interrogatories are to be promptly supplemented in accordance with the requirements of Rule 26 (e) of the Federal Rules of Civil Procedure.

INTERROGATORY NO. 1:

Identify each product or service marketed or sold by Opposer in the United States in connection with the Mark, and give the date of Opposer's first sale for each such product or service.

INTERROGATORY NO. 2:

Identify the person(s) employed by Opposer most knowledgeable concerning the development, nature and use of each product and service Opposer offers, has offered, or plans to offer for sale in connection with the mark.

INTERROGATORY NO. 3:

Describe the manner including channel of trades in which Opposer distributes and sells products and services in connection with the mark.

INTERROGATORY NO. 4:

Identify the person(s) primarily responsible for the preparation or approval of advertisements or promotions of products and services marketed in the U.S. by Opposer in connection with the mark.

INTERROGATORY NO. 5:

State the amount of money Opposer has spent annually for advertising or promoting products and services sold in the U.S. in connection with the mark.

INTERROGATORY NO. 6:

Identify each third-party use, including each claim of use or possible use, past or present, of the mark or any mark similar to "LEXUS" known to Opposer.

INTERROGATORY NO. 7:

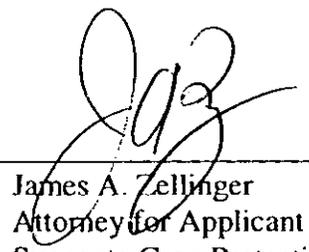
Identify any rights that Opposer has granted (e.g., through a license, assignment, security interest, or any other means) to any third party or acquired from any third party in any LEXUS mark, and the persons most knowledgeable concerning each grant or acquisition.

INTERROGATORY NO. 8:

Describe each instance or possible instance of actual confusion, mistake, deception, or association of any kind between Opposer or its use of the mark and Applicant or its use of the any LEXUS mark, including the date of each instance and each person with knowledge of each such instance.

Respectfully submitted,
Applicant,

By: _____


James A. Zellinger
Attorney for Applicant
Syngenta Crop Protection Inc.
410 Swing Rd.
Greensboro, N.C. 27409

CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing Applicant's First Set of Interrogatories to Opposer's attorney of record as listed below by placing a copy of same in the U. S. Mail, properly addressed and postage prepaid, to:

David J. Kera
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

on this the 12 day of August, 2003.



James A. Zellinger

DEFINITIONS

1a. "Opposer" or "Plaintiff" means Toyota Jidosha Kabushiki Kaisha d/b/a Toyota Motor Corporation, its predecessors in interest, if any, any and all corporations, firms or other persons owned or controlled by or owning or controlling defendant, present and former officials, executives, officers, employees, attorneys and agents of it, its predecessors in interest and/or such owned or controlled or owning or controlling persons; and all other persons acting or purporting to act on behalf of defendant, its predecessor(s) in interest and/or such owned or controlled or owning or controlling persons.

1b. "Applicant" or "Defendant" means Syngenta Crop Protection, Inc.,

2. "Mark" or "Trademark" means the marks 'Lexus', 'Lexxus', any similarity thereto, and any use including use with other marks or terms, or in conjunction with other words or term.

3. "Document" means any medium to which plaintiff has or has had access, custody, control or possession, and upon which intelligence or information is recorded or from which intelligence or information can be recorded, including but without limiting the generality of the foregoing, punch cards, magnetic tape or wire, print-out sheets, movie film, slides, phonograph records, photographs, microfilm patents and applications therefor, notes, letters, memoranda, ledgers, work sheets, books, magazines, reprints, summaries, reports, studies, projections, notebooks, diaries, calendars, appointment books, registers, graphs, charts, sketches, drawings, plans, blueprints; tables, calculations, specifications, analysis, papers, agreements, contracts, purchase orders, acknowledgments, invoices, authorizations budgets, schedules, transcripts, advertisements, correspondence, telegrams, telexes, teletypes, drafts, minutes of meetings of board of directors and executive committee, and each copy or draft of any of the foregoing which is non-identical because of marginal notations or otherwise.

4. "Person" includes any firm, corporation, partnership, joint venture, organization, association, entity, trust, labor union, government, governmental agency or court, unless the context clearly indicates that reference is made to only a natural person.

5. "Identify" means, with respect to a document (or a draft thereof), to state all of the following information:

(a) The date appearing on such document, and if no date appears thereon, the answer shall so state and shall give the date or approximate date such document was prepared;

(b) The identifying or descriptive code number, file number, title or label of such document;

(c) The general nature of description of such document (i.e., whether it is a letter, memorandum, drawing, etc.) and the number of pages of which it consists;

(d) The name of the person who signed such document, and if it was not signed, the answer shall so state and shall give the name of the person or persons who prepared it;

(e) The name of the person to whom such document was addressed and the name of each person other than such addressee to whom such document, or copies thereof, were given or sent;

(f) The general subject matter of such document;

(g) The location(s) where the document has been stored and identify the person having possession, custody or control of such document;

(h) Whether or not any draft, copy or reproduction of such document contains any postscript, notation, change, revision, addition, deletion or addendum not appearing on said document itself, and if so, the answer shall give the description as herein defined of each such draft, copy or reproduction; and

(i) Whether or not it is claimed that such document is privileged, and if so, the type of privileges claimed, whether the information contained or referred to in such document is in the possession of any other person(s), and if so, identify such person(s) and state how the information came into their possession, and a statement of all of the circumstances which defendant will rely on the support such claim or privilege.

The foregoing information shall be given in sufficient detail to enable a party or person to whom a request or subpoena is directed to identify fully the document for production and to enable counsel for plaintiff to determine that such document when produced is in fact the document is described. If any such document was, but is no longer, in defendant's possession or custody, or subject to its control, or in existence, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily, to others, or (4) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition thereof and state the date or approximate date thereof.

In lieu of the foregoing identification, production of such document may be made (each document to be designated as responsive to the particular interrogatory calling for its identification); except that (1) each document to which a claim of privilege is asserted must be identified in the manner described above, and (2) each document which is no longer in defendant's possession or custody or subject to its control, or in existence must be identified in the manner described above.

6. "Identify" means, with respect to any natural person, to state to the extent known the following information about the person:

- (a) His full name;
- (b) His present address and if that is not known, his last known address and the last known date he resided there; and
- (c) If such person is or was ever employed by defendant, the individual's employment history with applicant by date, job description and title.

7. "Identify" means, with respect to any entity other than a natural person, to state:

- (a) The full name of title thereof and its state of incorporation where applicable;
- (b) The principal place of business thereof;
- (c) The nature or type of entity, if known, and
- (d) The principal business thereof.

8. "Communication" means and includes any form of communication from one person to another, whether written or oral.

9. "Identify" means, with respect to communication, to state all of the following information:

(a) Whether it is written or oral;

(b) If oral, state (i) the substance of the oral utterance, (ii) the date and place thereof, (iii) identify the persons making the oral utterances, and (iv) identify each person who was present at the time the oral utterance were made; and

(c) If written, identify all documents which reflect the communication and all documents which pertain, refer or relate in any manner whatsoever to the communication.

10. Where the context herein makes it appropriate, each singular word shall include its plural and each plural word shall include its singular.

DUTY TO SUPPLEMENT

These requests for production of documents shall be deemed continuing, and Toyota shall be obligated to change, supplement and amend its answers as prescribed by Rule 26 (e) of the Federal Rules of Civil Procedure.

PRIVILEGE

If any information called for by the requests is withheld on the basis of a claim of privilege, the nature of the information in respect of which it is claimed shall be set forth, together with the type of privilege claimed and a statement of all of the circumstances which Opposer will rely on to support such claim of privilege.

REQUESTS FOR PRODUCTION

1. Representative samples of all product and advertising representing the use or intended use of the mark 'LEXUS' thereto by Opposer.

2. All trademark searches, applications, surveys, copies thereof, regarding the mark ordered by, conducted by, filed by, or maintained by Opposer.

3. All correspondence, cease and desist letters, documents, memoranda (excluding all confidential client information) possessed by Opposer or its counsel regarding the mark and use by third parties and/or licensees.

4. All documents including invoices, receipts, shipping invoices, bills of lading, order forms, reflecting the sale of any products by Opposer bearing the mark since January 1, 1998.

5. All documents relating to or identifying any alleged confusion, or claim or report of confusion, by any customer of Opposer or third party(ies).

6. All documents showing the development, nature and use of each product and service Opposer has marketed or plans to market in connection with any 'Lexus' mark.

7. All documents sufficient to identify Opposer's annual dollar and unit volumes of sales in the United States for each product and service sold in connection with each of its 'Lexus' marks since Opposer's first sale of each such product and service or Jan.1, 1998, whichever is later.

8. All documents that reveal the prices charged to customers for each product and service marketed or sold by Opposer in connection with the mark.

9. All documents that reveal Opposer's annual marketing expenses in the United States for each product and service marketed in connection with the mark, including but not limited to, expenses for advertising and promotion.

10. All documents that reveal representative outlets through which Opposer's products and services have been sold or offered for sale to customers in connection with the mark.

11. All documents that reveal the channels of trade through which Opposer has promoted or advertised, or currently promotes or advertises, products and services in connection with the mark.

12. All documents that relate or refer to Opposer's marketing or future marketing of products and services in connection with the mark, including but not limited to representative specimens of all advertisements, promotional materials, and other documents Opposer uses or plans to use in the advertising or promotion, or planned advertising or promotion, of Opposer's products and services marketed in connection with the mark.

13. All documents that relate or refer to Opposer or Opposer's use of its mark.

14. All documents that relate or refer to any instances or possible instances of confusion, mistake, or deception which have or may have occurred between Opposer or Opposer's use of the mark, and Applicant's or Third Party(ies)'s use of the mark or any similarity to said mark.

15. All documents that relate or refer to each use, including each claim of use or possible use, past or present, by any third party of the mark.

16. All documents that constitute, relate to, or refer to any formal or informal investigation, including, but not limited to research, searches, surveys, tests, or studies of any kind, that Opposer has conducted or has knowledge of pertaining to Applicant's, Opposer's, or any third party's use of the mark, or pertaining to any of the products or services or the markets for the products or services identified by any of the aforesaid marks.

By:



James A. Zellinger
Trademark Counsel
Syngenta Crop Protection, Corp.
410 Swing Rd.
Greensboro, N.C.27409

CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing Applicant's First Request for Production of Documents to Opposer's attorney of record as listed below by placing a copy of same in the U. S. Mail, properly addressed and postage prepaid, to:

David J. Kera
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

on this the 12 day of August, 2003.



James A. Zellinger

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

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

| | | |
|-----------------------------------|---|-----------------------------------|
| TOYOTA JIDOSHA KABUSHIKI KAISHA |) | |
| t/a TOYOTA MOTOR CORPORATION |) | |
| and |) | |
| TOYOTA MOTOR SALES, U.S.A., INC., |) | |
| |) | |
| Opposer |) | |
| v. |) | Opposition No. 157,206 |
| |) | Mark: LEXUS |
| SYNGENTA PARTICIPATIONS AG, |) | U.S. Appln. Serial No. 78/145,546 |
| |) | |
| Applicant. |) | |

OPPOSERS' OBJECTION TO APPLICANT'S FIRST SET OF INTERROGATORIES

Opposers Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Opposers") object to Applicant's First Set of Interrogatories because they were served prematurely.

The Board's Order of July 29, 2003 set August 18, 2003 as the opening day of discovery. Applicant's First Set of Interrogatories was served on August 12, 2003. Therefore, Applicant's

First Set of Interrogatories was served prematurely and Opposers object on that ground. TBMP
§ 403.02.

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI
KAISHA D/B/A TOYOTA MOTOR
CORPORATION AND TOYOTA MOTOR
SALES, U.S.A., INC.

By: 
David J. Kera
Amy Sullivan Cahill
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220

Attorneys for Opposers

Date: September 11, 2003

DJK/ASC/tmq/ojb [I:\ATTY\DJK\0213-238096US-RES-INT.DOC]

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSERS' OBJECTION TO APPLICANT'S FIRST SET OF INTERROGATORIES** was served on counsel for Syngenta Participations AG this 11th day of September 2003 by sending same, via first class mail, postage prepaid to:

James A. Zellinger, Esq.
SYNGENTA CROP PROTECTION INC.
410 Swing Road
Greensboro, North Carolina 27409

D. Jean Barrett

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

| | | |
|-----------------------------------|---|-----------------------------------|
| TOYOTA JIDOSHA KABUSHIKI KAISHA |) | |
| t/a TOYOTA MOTOR CORPORATION |) | |
| and |) | |
| TOYOTA MOTOR SALES, U.S.A., INC., |) | |
| |) | |
| Opposer |) | |
| v. |) | Opposition No. 157,206 |
| |) | Mark: LEXUS |
| SYNGENTA PARTICIPATIONS AG, |) | U.S. Appln. Serial No. 78/145,546 |
| |) | |
| Applicant. |) | |
| |) | |

OPPOSERS' OBJECTION TO APPLICANT'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

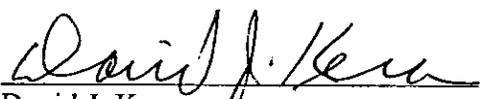
Opposers Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Opposers") object to Applicant's First Request for Production of Documents because they were served prematurely.

The Board's Order of July 29, 2003 set August 18, 2003 as the opening day of discovery. Applicant's First Request for Production of Documents was served on August 12, 2003.

Therefore, Applicant's First Request for Production of Documents was served prematurely and Opposers object on that ground. TBMP § 403.02.

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI
KAISHA D/B/A TOYOTA MOTOR
CORPORATION AND TOYOTA MOTOR
SALES, U.S.A., INC.

By: 
David J. Kera
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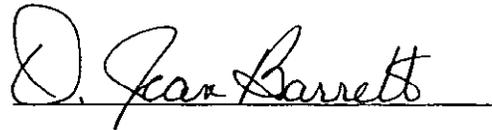
Attorneys for Opposers

Date: September, 2003
DJK/ASC/tmq/ojb [I:\ATTY\DJK\0213-238096US-RES-RFP.DOC]

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSERS' OBJECTION TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** was served on counsel for Syngenta Participations AG this 11th day of September 2003 by sending same, via first class mail, postage prepaid to:

James A. Zellinger, Esq.
SYNGENTA CROP PROTECTION INC.
410 Swing Road
Greensboro, North Carolina 27409



James A. Zellinger
Trademark Counsel

TTAB
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Fax 336-632-2012
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December 19, 2003

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

U.S. Patent & Trademark Mail Rep'd #78
12-22-2003

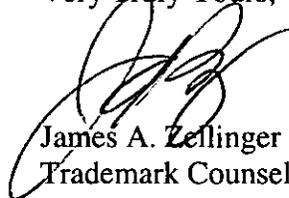
Re: LEXUS, Serial No. 78/145,546; Opposition No. 157,206
LEXXUS, Serial No. 78/185,538

Dear Sir or Madam:

Please find enclosed APPLICANT'S RESPONSE TO OPPOSERS' MOTION TO CONSOLIDATE. Please file in conjunction with the above.

Thank you for your assistance with this matter.

Very Truly Yours,


James A. Zellinger
Trademark Counsel

JAZ/sk
encl.