



36); and Applicant's Response to Opposers' Second Set of Interrogatories attached as Exhibit C (see Applicant's Answers to Interrogatory Nos. 37-42).

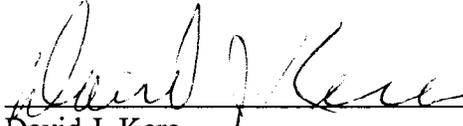
Part V. of Applicant's response refers to a "large amount of non-confidential materials in the possession of Opposers and requested by Applicant that has NOT been produced by Opposers". In support of its statement, Applicant attaches a letter in which its counsel refers to a single case. That is the only case identified by Applicant for which it is awaiting documents. The reference to a "large amount of non-confidential materials" appears to be an exaggeration.

Since Applicant has never disavowed its previous objections to discovery on the basis that the information was confidential, Opposers request that the close of discovery be reset for a date two months after the Board rules on the pending motions for entry of a Protective Order.

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI  
KAISHA t/a TOYOTA MOTOR  
CORPORATION, and TOYOTA MOTOR  
SALES, U.S.A., INC.

By:

  
\_\_\_\_\_  
David J. Kera  
Amy Sullivan Cahill  
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Date: Dec. 3, 2004  
DJK/ASC/kae/ojb {I:\atty\DJK\0213-238096US-rply.doc}

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSERS' REPLY IN SUPPORT OF MOTION TO RESET CLOSE OF DISCOVERY PERIOD AND TO RESCHEDULE TESTIMONY PERIODS** was served on counsel for Applicant, this 3<sup>rd</sup> day of December, 2004, by sending same via First Class mail, postage prepaid, to:

James A. Zellinger, Esquire  
SYNGENTA CROP PROTECTION INC.  
410 Swing Road  
Greensboro, NC 27409

  
\_\_\_\_\_

# **EXHIBIT A**

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

TOYOTA JIDOSHA KABUSHIKI KAISHA	)	
d/b/a TOYOTA MOTOR CORPORATION,	)	
	)	
Opposer	)	Serial No.: 78/145,546
	)	
v.	)	Filed: July 19, 2002
	)	
SYNGENTA PARTICIPATIONS AG	)	Mark: LEXUS
	)	
Applicant.	)	

TOYOTA JIDOSHA KABUSHIKI KAISHA	)	
d/b/a TOYOTA MOTOR CORPORATION,	)	
	)	
and	)	
	)	
TOYOTA MOTOR SALES, U.S.A., INC.	)	
	)	
Opposers	)	Serial No.: 78/185,538
	)	
v.	)	Filed: Nov. 15, 2002
	)	
SYNGENTA PARTICIPATIONS AG	)	Mark: LEXXUS
	)	
Applicant.	)	

**APPLICANT'S RESPONSE TO OPPOSERS' FIRST REQUEST FOR PRODUCTION OF**  
**DOCUMENTS AND THINGS**

**RESPONSE:**

**GENERAL OJECTIONS:**

The requests made by Opposers, except as where specifically identified otherwise, are vague, unduly burdensome, irrelevant, overbroad, and not designated to lead to discoverable or relevant information. Much of the information requested by Opposers is in the possession of Opposers, easily accessible to them, not located in the

United States, not available, and relevant only to non-U.S. markets, or easily accessible to Opposers by other means. Opposers also seek proprietary and confidential information which are both irrelevant and improper requests.

OPPOSER'S REQUESTS:

1. Produce those documents and things regarding the creation, selection, and adoption of Applicant's Mark by or on behalf of Applicant.

RESPONSE:

Objection: See General Objections. This request is extremely vague and burdensome, and apparently seeks privileged and/or confidential documents. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request.

Applicant has no other files located in the United States but may have limited additional material which it will identify and produce if not confidential and is relevant, when located and obtained by Applicant's U.S. counsel.

Applicant is fully aware of its ongoing duty to timely supplement its response when, and if, said materials and documents covered by Opposers' request are created or available.

Applicant will supplement its response hereto when information becomes available and

Applicant reserves the right to amend and supplement its responses hereto.

EXHIBITS (Attached hereto)

1. Canadian TM (approval) publication – 3 pages;
2. LEXAR TM search – Thompson & Thompson – 143 pages (not produced herewith);
3. Notice of Publication 4/16/03 – 1 page;
4. Lexus TM search – TESS – 8/23/02 – 4 pages;
5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

2. Produce those documents regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search concerning Applicant's selection, first use, or decision to apply for Federal registration of Applicant's Mark.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

3. Produce those documents regarding the earliest date and circumstances under which Applicant became aware of the use or registration by Opposer of any of Opposer's Marks.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

4. Produce those documents regarding any action taken by Applicant in response to its awareness of any of Opposers' Marks.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Any request for information regarding Opposers' other marks or business name is irrelevant. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

5. Produce those documents and things demonstrating each type of product in connection with which Applicant's Mark has been used or is proposed to be used.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

6. Produce those documents describing the specific chemical formulations of each of Applicant's Products.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Any request for 'formulas' and other proprietary information is irrelevant and subject to Applicant's objections. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available which are not proprietary.

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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

7. Produce those documents demonstrating the warnings and precautions associated with the use of each of Applicant's Products.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Any packaging or labels have not yet been created. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

8. Produce those documents regarding the geographical areas and channels of trade in which Applicant's Mark has been used or is proposed to be used.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to these U.S. proceedings and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

9. Produce those documents regarding any assignment, consent, authorization, license or permission between Applicant and any individual(s) or entity(ies) regarding Applicant's Mark, including any modifications made thereto.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to these U.S. proceedings and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

10. Produce each governmental license obtained in the United States for the sale, distribution, or use of each of Applicant's products.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

11. Produce each application for a governmental license in the United States for the sale, distribution, or use of each of Applicant's products.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. oppositions and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

12. Produce representative specimens of each different item of packaging and labeling materials for Applicant's Products bearing Applicant's Mark, including the prototypes, drafts and sketches for said packaging and labeling, and those documents regarding the design and/or creation of said packaging and labeling.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items

within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

13. Produce photographs showing the containers in which Applicant's products are being or are intended to be shipped or distributed.

RESPONSE:

Objection: See General Objections. None available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

14. Produce representative specimens of the current and proposed advertising and promotional documents bearing Applicant's Mark used or intended to be used by or on behalf of

3. Notice of Publication 4/16/03 – 1 page;
4. Lexus TM search – TESS – 8/23/02 – 4 pages;
5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

16. Produce those documents regarding the dollar value of actual and/or projected sales of Applicant's Products.

**RESPONSE:**

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

17. Produce those documents regarding the amount of money expended and/or budgeted to promote Applicant's Products bearing Applicant's Mark.

**RESPONSE:**

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement

Applicant.

RESPONSE:

Objection: See General Objections. None available at this time regardless. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

15. Produce those documents regarding the types of customers with whom Applicant does or intends to do business in connection with Applicant's Mark, and the ultimate purchasers to whom Applicant offers or intends to offer products bearing Applicant's Mark.

RESPONSE:

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

18. Produce copies of any surveys, market research tests, demographic or consumer profile studies, and focus group inquiries regarding the ultimate purchasers or potential ultimate purchasers of Applicant's Products actually or intended to be sold, offered for sale, advertised or promoted in connection with Applicant's Mark, including the results thereof.

RESPONSE:

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

19. Produce copies of any comparison studies, surveys, market research tests, and those documents relating thereto, including the results thereof, concerning the products advertised, promoted, distributed and sold in commerce in connection with Applicant's Mark and the products or services advertised, promoted, distributed and sold in connection with Opposers' Marks identified in the Notice of Opposition, including, but not limited to, those relating to confusion or likelihood of confusion between Applicant's Products and the products or services advertised, promoted, distributed and sold in connection with Opposers' Marks.

RESPONSE:

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

20. Produce those documents demonstrating use by each third party you maintain is using the LEXUS mark as stated in correspondence dated September 12, 2002 attached hereto as Exhibit A.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers'

request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

21. Produce those documents demonstrating each federal registration or application for registration of the LEXUS mark as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A.

RESPONSE:

Objection: See General Objections. Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

22. Produce those documents supporting the existence each of the "LEXUS businesses throughout the U.S." referred to in your correspondence dated September 12, 2002 attached hereto as Exhibit A.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

23. Produce those cases and other documents, including the "Profile Cocktail Lounge" case, in which you maintain the courts have considered the issues presented in this Opposition proceeding as stated in correspondence dated September 12, 2002 attached hereto as Exhibit A.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

24. Produce all documents reflecting contact between Applicant or its representatives and the “previous law firm” referred to in the September 12, 2002 correspondence attached as Exhibit A regarding this matter, including copies of all correspondence between Applicant or its representatives and the “previous law firm” regarding this matter.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers’ request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers’ request are created or available.

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1. Canadian TM (approval) publication – 3 pages;
2. LEXAR TM search – Thompson & Thompson – 143 pages (not produced herewith);
3. Notice of Publication 4/16/03 – 1 page;
4. Lexus TM search – TESS – 8/23/02 – 4 pages;
5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

25. Explain the nature of the business relationship between Applicant and Novartis.

RESPONSE:

Objection: See General Objections. This item is an Interrogatory which has been responded to contemporaneously with this response. Applicant would submit the following list of

items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

EXHIBITS (Attached hereto)

1. Canadian TM (approval) publication – 3 pages;
2. LEXAR TM search – Thompson & Thompson – 143 pages (not produced herewith);
3. Notice of Publication 4/16/03 – 1 page;
4. Lexus TM search – TESS – 8/23/02 – 4 pages;
5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

26. Produce those documents demonstrating the method or manner of shipping Applicant's Products.

RESPONSE:

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

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1. Canadian TM (approval) publication – 3 pages;
2. LEXAR TM search – Thompson & Thompson – 143 pages (not produced herewith);
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4. Lexus TM search – TESS – 8/23/02 – 4 pages;
5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

27. For each expert Applicant intends to call to provide testimony in this proceeding, produce.

- a) any written report provided by said expert relating to the subject matter of this proceeding;
- b) a complete written statement of all opinions to be expressed by the expert in this proceeding, and the basis and reason therefor;
- c) all documents reflecting the data or other information considered by the expert in forming his/her opinions;
- d) all exhibits to be used by the expert as a summary of or support for his/her opinions;
- e) those documents stating the qualifications of the expert, such as would be reflected in a resume, *curriculum vitae*, biography, summary or otherwise;
- f) a written list of all publications written by the witness within the last ten years;
- g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and
- h) a written list of any other cases in which the witness has testified as an expert at trial, in an administrative proceeding or by deposition within the past four years.

**RESPONSE:**

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

**EXHIBITS (Attached hereto)**

1. Canadian TM (approval) publication – 3 pages;
2. LEXAR TM search – Thompson & Thompson – 143 pages (not produced herewith);
3. Notice of Publication 4/16/03 – 1 page;
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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

28. Produce those documents and things forming the basis of the *bona fides* of Applicant's intent to use Applicant's Mark in commerce on the date the application was filed that was ultimately given Serial No. 78/145,546 by the U.S. Patent and Trademark Office.

RESPONSE:

Objection: See General Objections. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

EXHIBITS (Attached hereto)

1. Canadian TM (approval) publication – 3 pages;
2. LEXAR TM search – Thompson & Thompson – 143 pages (not produced herewith);
3. Notice of Publication 4/16/03 – 1 page;
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5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

29. Produce those documents, not otherwise requested herein, and referred to by Applicant in responding to the interrogatories.

RESPONSE:

Objection: See General Objections. Not available at this time. Applicant would submit the following list of items within its control and relevant to this U.S. opposition and as an in globo response to Opposers' request. Applicant is fully aware of its ongoing duty to timely supplement its response when and if said materials and documents covered by Opposers' request are created or available.

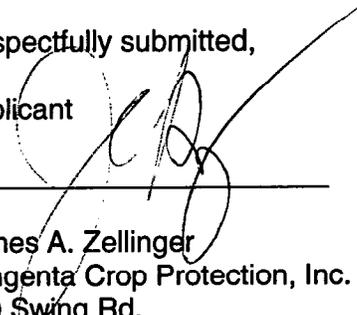
EXHIBITS (Attached hereto)

1. Canadian TM (approval) publication – 3 pages;
2. LEXAR TM search – Thompson & Thompson – 143 pages (not produced herewith);
3. Notice of Publication 4/16/03 – 1 page;
4. Lexus TM search – TESS – 8/23/02 – 4 pages;
5. Lexus TM search – TESS – 7/29/03 – 4 pages;
6. Lexus TM search – TESS – 7/18/03 – 32 pages;
7. PTO letters – miscellaneous dates;
8. Misc. letters between counsel for the parties prior to opposition (not produced herewith)

Respectfully submitted,

Applicant

By \_\_\_\_\_

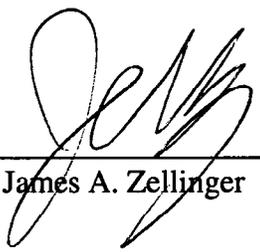
  
James A. Zellinger  
Syngenta Crop Protection, Inc.  
410 Swing Rd.  
Greensboro, N.C. 27410

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 First Request for Production of Documents and First Set of Interrogatories to Opposers' 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 22nd day of June, 2004.



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James A. Zellinger

# **EXHIBIT B**

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

TOYOTA JIDOSHA KABUSHIKI KAISHA )	
d/b/a TOYOTA MOTOR CORPORATION, )	
)	
Opposer )	Serial No.: 78/145,546
)	
v. )	Filed: July 19, 2002
)	
SYNGENTA PARTICIPATIONS AG )	Mark: LEXUS
)	
Applicant. )	

TOYOTA JIDOSHA KABUSHIKI KAISHA )	
d/b/a TOYOTA MOTOR CORPORATION, )	
)	
and )	
)	
TOYOTA MOTOR SALES, U.S.A., INC. )	
)	
Opposers )	Serial No.: 78/185,538
)	
v. )	Filed: Nov. 15, 2002
)	
SYNGENTA PARTICIPATIONS AG )	Mark: LEXXUS
)	
Applicant. )	

**APPLICANT'S RESPONSE TO OPPOSERS' FIRST SET OF INTERROGATORIES**

**GENERAL OJECTIONS:**

The requests made by Opposers, except as where specifically identified otherwise, are vague, unduly burdensome, irrelevant, overbroad, and not designated to lead to discoverable or relevant information. Much of the information requested by Opposers is in the possession of Opposers, easily accessible to them, not located in the United States, not available, and relevant only to non-U.S. markets, or easily accessible to Opposers by other means.

Opposers also seek irrelevant but highly confidential formulations or product information for products which may bear the mark. Applicant objects thereto.

Opposers also seek extremely long and narrative responses to many of its interrogatories which are inappropriate and unduly burdensome as they often seek to establish proof of a 'negative' condition which is neither relevant nor a burden to be carried by Applicant.

Applicant also objects to the definitions employed by Opposers' in their information requests. Applicant will provide responses pursuant to a reasonable interpretation of said definitions.

Opposers also seek privileged and confidential information that is covered and protected by the attorney-client relationship. This information will be briefly identified but not produced.

Applicant reserves its right to amend and supplement its responses to Opposers' discovery requests.

INTERROGATORY NO. 1

State the address of each worldwide location at which Applicant maintains a place of business for the manufacturing, promotion, sale, and distribution of Applicant's Products in the United States.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant does not maintain a site for the manufacture, promotion, sale, and distribution of any seed treatment or seed product in the U.S. bearing the mark, Lexus.

INTERROGATORY NO. 2

State the date Applicant selected Applicant's Mark for use in connection with Applicant's Products.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant selected the mark approximately some time late in 2001.

INTERROGATORY NO. 3

Identify (by name, job title, and relationship to Applicant) the person(s) who first conceived of Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant is unable to identify an individual(s) who "conceived" of "Applicant's mark" but would identify Hans Steiner, Schwarzwaldallee 215, Basel, Switzerland, as Brand Manager as the agent of Applicant who is most familiar with selection of the mark.

INTERROGATORY NO. 4

Describe in detail the genesis of Applicant's Mark.

RESPONSE:

Objection. See General Objections. Furthermore, Applicant is unable to determine what is meant by the term "genesis". However, without waiving said objections, the mark is a commonly used word or term for various businesses and products, unrelated to the parties herein, and was partially adopted due to its availability for Applicant's products, historical context, and foreign translation.

INTERROGATORY NO. 5

Identify all searches of any type conducted by or on behalf of Applicant in connection with its selection, use, or decision to apply for Federal registration of Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant has conducted a number of searches for the United States. There were numerous searches undertaken by Applicant in the U.S. Many of the results of these searches were not maintained and a few were. Some are undated or conducted on various dates. Applicant has identified and produced them in its response to Opposers' document production request.

INTERROGATORY NO. 6

State whether Applicant had knowledge of Opposers' use or registration of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant is not aware of any other marks or business names used or owned by Opposers and said request for "any of Opposers' marks" or business names, other than the mark Lexus or Lexxus, is irrelevant and Applicant would object thereto. However, without waiving said objections, Applicant was aware of numerous, if not unlimited uses, of the mark, Lexus, by numerous other users such as for business names, product names, and registered and unregistered trademarks, including Opposers' mark, among others.

INTERROGATORY NO. 7

State the earliest date on which Applicant had knowledge of Opposers' use or registration of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant is not aware of any other marks or business names used or owned by Opposers and said request for "any of Opposers' marks" or business names, other than the mark Lexus is irrelevant and Applicant would object thereto. Applicant is aware of numerous, if not unlimited uses, of the mark by numerous users including Opposers, among others, as early as late 2001.

INTERROGATORY NO. 8

If Applicant had prior knowledge of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark, state the precise facts known and identify the source of this knowledge.

RESPONSE:

Objection. See General Objections. Applicant is not aware of any other marks or business names used or owned by Opposers and said request for "any of Opposers' marks" or business names, other than the mark Lexus, is irrelevant and Applicant would object thereto. However, without waiving said objections, Applicant is aware of numerous, if not unlimited uses, of the mark by numerous users including Opposers' use, among others, from various sources including the world-wide internet, U.S. Patent and Trademark Office web-site, common knowledge, and other world-wide trademark databases.

INTERROGATORY NO. 9

If Applicant had prior knowledge of any of Opposers' Marks or Opposers' Name identified in the Notice of Opposition prior to Applicant's selection, first use, or filing for Federal registration of Applicant's Mark, state whether Applicant considered the issue of, or received any opinions concerning, a likelihood of confusion between Applicant's Mark and any of Opposers' Marks or Opposers' Name.

RESPONSE:

Objection: See General Objections. Applicant would further object on the grounds of attorney-client privilege and that Opposers seek inadmissible legal conclusions. However, without waiving said objections, Applicant was advised of the many wide-varied uses of the mark by numerous other trademark registrants or applicants, businesses, and other users, including prior federal registrations and applications in U.S. trademark classes other than those where Opposers' products may be found, as well as litigation involving Opposers. These searches are identified and produced in Applicant's responses to Opposers' document production requests.

INTERROGATORY NO.10

Identify, by common commercial descriptive name, each product bearing Applicant's Mark actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there currently are none. However, Applicant would identify seeds, seed treatments and seed products as potential goods that will bear the mark.

INTERROGATORY NO.11

For each of Applicant's Products identified in Interrogatory No. 10, state the date of first use or anticipated date of first use anywhere and in United States commerce, and describe the circumstances surrounding such first use anywhere and in commerce.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, it is not known at this time. There is not any current use in the U.S. at this time.

INTERROGATORY NO. 12

For each of Applicant's Products identified in Interrogatory No. 10, state the specific chemical formulation, instructions for use, warnings, and precautions.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, it is unknown and not applicable at this time. Applicant further responds that it will not provide any formulation or other proprietary information in conjunction with this request.

INTERROGATORY NO.13

For each of Applicant's Products identified in Interrogatory No. 10, state, by calendar quarter, the dollar volume budgeted and expended by Applicant to promote the products under Applicant's Mark.

RESPONSE:

(See response to Interrogatory #10.)

N/A and none at this time.

INTERROGATORY NO.14

For each product identified in Interrogatory No. 10, state, by calendar quarter, the approximate income anticipated or received to date from sales of Applicant's Products.

RESPONSE:

(See response to Interrogatory #10.)

Unknown or N/A

INTERROGATORY NO.15

Identify each third-party you maintain is using the LEXUS mark as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the name of each third-party user;
- b) the goods or services for or with which each third-party is using the LEXUS mark;  
and
- c) the dates of each third-party's use of the LEXUS mark in so far as this information is within the knowledge of Applicant or its representatives.

RESPONSE:

Objection. See General Objections. Opposers' request is voluminous and said information is within the control or easily accessible to Opposers . However, without waiving said objections, Applicant has produced said documentation as identified in its response to Applicant's Request for Production of Documents. Furthermore, said information is either readily available to Opposers through other means or will be made available to Applicant upon receipt of production by Opposers. Applicant agrees to, and reserves the right to, amend its response hereto.

INTERROGATORY NO.16

Identify each third-party you maintain has registered or applied for registration of the LEXUS mark as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the name of each third-party applicant or registrant;
- b) the USPTO application number or registration number for each third-party application or registration;
- c) the goods or services included in each third-party application or registration; and
- d) the date of claimed first use in each third-party application and registration.

RESPONSE:

Objection. See General Objections. Opposers' request is voluminous and said information is within the control or easily accessible to Opposers . However, without waiving said objections, Applicant has produced said such documentation as identified in its response to Applicant's Request for Production of Documents which identify the information above (a-d) sought by Opposers. Furthermore, said information is either readily available to Opposers through other means or will be made available to Applicant upon receipt of production by Opposers.

INTERROGATORY NO.17

Identify each of the "LEXUS businesses throughout the U.S." referred to in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the full name of each "LEXUS business";
- b) the location of each "LEXUS business";
- c) a description of the goods or services offered by each "LEXUS business" in so far as this information is within the knowledge of Applicant or Applicant's

representatives; and

- d) the length of time each "LEXUS business" has been in existence in so far as this information is within the knowledge of Applicant or Applicant's representatives.

RESPONSE:

Objection. See General Objections. Opposers' request is voluminous and said information is within the control or easily accessible to Opposers . However, without waiving said objections, Applicant has produced said such documentation as identified in its response to Applicant's Request for Production of Documents which identify the information above (a-d) sought by Opposers. Furthermore, said information is either readily available to Opposers through other means or will be made available to Applicant upon receipt of production by Opposers.

INTERROGATORY NO.18

Identify each of the cases, including the "Profile Cocktail Lounge" case in which the courts have considered the issue presented in this Opposition as stated in your correspondence dated September 12, 2002 attached hereto as Exhibit A, including:

- a) the style of each case, including case caption and parties' names;
- b) the tribunal in which the case was or is pending; and
- c) a full citation to the case decision, if any, and where a copy of the decision may be obtained.

RESPONSE:

Objection. See General Objections. Opposers' request is voluminous and said information is within the control or easily accessible to Opposers and is an obvious attempt to harass Applicant. Furthermore, said request seeks attorney work product and (said information is public information readily available to Opposers, if not already in their possession). Furthermore, Applicant is not aware of any "case" in which the "courts" have "considered the

issue presented in this Opposition". However, without waiving said objections, Applicant would agree to produce all such documentation as identified in its response to Applicant's Request for Production of Documents. Said information is either readily available to Opposers through other means, already in their possession, or will be made available to Applicant upon production by Opposers. Finally, Applicant is not aware of any ("your") correspondence of September 12, 2002. Applicant does recognize a letter sent by its counsel, not an employee of Applicant, which is irrelevant to both this opposition and this Interrogatory.

#### INTERROGATORY NO.19

Please identify the "previous law firm" referred to in the September 12, 2002 correspondence attached as Exhibit A, including:

- a) the name of the individual attorney and law firm referred to;
- b) the dates of each piece of written correspondence between Applicant or its representatives and the "previous law firm";
- c) the subject matter of each piece of written correspondence between Applicant or its representatives and the "previous law firm".

#### RESPONSE:

Objection. See General Objections. Opposers' request is irrelevant and inadmissible. Applicant is not aware of any ("your") correspondence of September 12, 2002. Applicant does recognize a letter sent by its counsel, not an employee of Applicant, which is irrelevant to both this opposition and this Interrogatory. However, without waiving said objections, Applicant is unable to so identify said individual since he lacked the courtesy to identify himself but upon conversations with counsel for Opposers by Applicant's counsel, it is believed to be David Kera, Opposers' counsel herein.

INTERROGATORY NO.20

Explain the business relationship between Applicant and Novartis.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant would summarize that Novartis was predecessor in interest to Applicant and Applicant is/was a legacy company which purchased part of its agricultural/chemical business and other assets from Novartis.

INTERROGATORY NO.21

Identify representative examples of each different promotional document and item used and being considered for use by Applicant in connection with the promotion and sale of Applicant's Products bearing Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none currently available relating to U.S. goods.

INTERROGATORY NO.22

Identify representative examples of each different labeling and packaging item or shipping container used or being considered for use by Applicant in connection with the distribution and sale of Applicant's Products.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none currently available relating to U.S. goods.

INTERROGATORY NO.23

Identify (by title, publisher, issue date, page number, media outlet, Internet TJRL, and any other relevant designation), those printed and electronic publications (including web sites and broadcast media commercials) in which Applicant has promoted or plans to promote Applicant's Products in connection with Applicant's Mark.

RESPONSE:

N/A or unknown at this time. However, without waiving said objections, there are none currently available relating to U.S. goods.

INTERROGATORY NO.24

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Applicant has promoted or plans to promote Applicant's Products in connection with Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none currently available relating to U.S. goods but Applicant's products will be generally advertised and promoted in agricultural media and at most agricultural trade shows

INTERROGATORY NO.25

Identify any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none currently available relating to U.S. goods.

INTERROGATORY NO.26

Identify those persons having the most knowledge of any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none currently available relating to U.S. goods.

INTERROGATORY NO.27

Identify any agreements (such as assignments, licenses, authorizations, permissions, or consents) entered into by Applicant regarding Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none currently available relating to U.S. goods.

INTERROGATORY NO.28

Identify the channels of distribution and the geographical areas of trade within which Applicant's Products are, or are intended to be, promoted.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, it is unknown at this time but Applicant would estimate that the products would be distributed world-wide and to directed to the agricultural business such as farmers, farm product suppliers, farm product distributors, wholesalers, retailers, and the crop protection business.

INTERROGATORY NO.29

Identify the types of customers with whom Applicant does or intends to do business in connection with Applicant's Mark and the types of ultimate consumers to whom Applicant offers or intends to offer for sale Applicant's Products.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, it is unknown at this time but Applicant would estimate that the products would be distributed world-wide and to directed to the agricultural and crop protection businesses.

INTERROGATORY NO.30

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Applicant's Products in connection with Applicant's Mark, and the period of time during which each such person or agency has participated.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none currently available relating to U.S. goods.

INTERROGATORY NO.31

Identify the methods of shipping or intended methods of shipping Applicant's Products.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, it is unknown at this time.

INTERROGATORY NO.32

For each expert Applicant has retained to give testimony in this proceeding, provide the information required in Rule 26(a)(2)(B), Fed.R.Civ.P.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, it is unknown at this time but Applicant will promptly respond upon selection and retention of any expert whose identity is required to be produced by the applicable rules or who will testify in conjunction with this matter.

INTERROGATORY NO.33

State the basis for the *bona fides* of Applicant's intent to use Applicant's Mark in commerce on the date the application that ultimately was given Serial No. 78/145,546 by the U.S. Patent and Trademark Office was filed.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant intended on said date to market and sell a seed or seed treatment product bearing the mark. It has filed various applications throughout the world indicating it bona-fides to utilize this mark on a global basis.

INTERROGATORY NO.34

Identify each Federal, state, or local governmental agency whose license or approval is required on the distribution or sale of each product sold or to be sold under Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, it is generally required to obtain approval from the U. S. Environmental Protection Agency and the

state Environmental Protection Agency for those U.S. states in which Applicant may market its product.

INTERROGATORY NO.35

Identify each license or notice of approval received from a Federal, state, or local governmental agency for the distribution or sale of each product sold or to be sold under Applicant's Mark.

RESPONSE:

Objection. See General Objections. However, without waiving said objections, there are none at this time.

INTERROGATORY NO.36

Identify each person who has supplied documents or information for, or who has participated in responding to, these interrogatories and, Opposers' First Request for Production of Documents and Things.

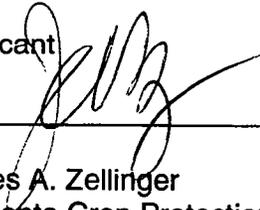
*re-  
sent*

RESPONSE:

Objection. See General Objections. However, without waiving said objections, Applicant's counsel; Susan Keefer, paralegal, 410 Swing Rd., Greensboro, N.C. 27410; Jane Collins Esq., Global Trademark Director for Syngenta A.G., Schwarzwaldallee 215, Basel Switzerland; and Hans Steiner, Schwarzwaldallee 215, Basel Switzerland.

Applicant

By \_\_\_\_\_

  
James A. Zellinger  
Syngenta Crop Protection, Inc.  
410 Swing Rd.  
Greensboro, N.C. 27410

VERIFICTION

SUSAN KEEFER, does hereby verify on behalf of Applicant that the above responses to Opposers' Interrogatories, are true and accurate to the best of her knowledge.

Susan S. Keefe  
June 21, 2024

# **EXHIBIT C**

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

TOYOTA JIDOSHA KABUSHIKI KAISHA )  
d/b/a TOYOTA MOTOR CORPORATION, )

Opposer )

v. )

SYNGENTA PARTICIPATIONS AG )

Applicant. )

Serial No.: 78/145,546

Filed: July 19, 2002

Mark: LEXUS

TOYOTA JIDOSHA KABUSHIKI KAISHA )  
d/b/a TOYOTA MOTOR CORPORATION, )

and )

TOYOTA MOTOR SALES, U.S.A., INC. )

Opposers )

v. )

SYNGENTA PARTICIPATIONS AG )

Applicant. )

Serial No.: 78/185,538

Filed: Nov. 15, 2002

Mark: LEXXUS

**APPLICANT'S RESPONSE TO OPPOSERS' SECOND SET OF INTERROGATORIES**

**GENERAL OJECTIONS:**

The requests made by Opposers, except as where specifically identified otherwise, are vague, unduly burdensome, irrelevant, overbroad, and not designated to lead to discoverable or relevant information. Much of the information requested by Opposers is in the possession of Opposers, easily accessible to them, not located in the United States, not available, and relevant only to non-U.S. markets, or easily accessible to Opposers by other means.

Opposers also seek irrelevant but highly confidential formulations or product information for products which may bear the mark. Applicant objects thereto.

Opposers also seek extremely long and narrative responses to many of its interrogatories which are inappropriate and unduly burdensome as they often seek to establish proof of a 'negative' condition which is neither relevant nor a burden to be carried by Applicant.

Applicant also objects to the definitions employed by Opposers' in their information requests. Applicant will provide responses pursuant to a reasonable interpretation of said definitions.

Opposers also seek privileged and confidential information that is covered and protected by the attorney-client relationship. This information will be briefly identified but not produced.

Applicant reserves its right to amend and supplement its responses to Opposers' discovery requests.

#### **INTERROGATORY NO. 37**

Describe the "historical context" referred to in Applicant's Answer to Interrogatory No. 4 cited in support of the genesis of Applicant's Mark.

#### **RESPONSE:**

Objection. See General Objections. However, without waiving said objections, Applicant would briefly summarize that there were numerous, if not incalculable, business names and trademark applications, both domestically and globally, that were so numerous that only minimal records were maintained. Furthermore, "Lexus" is a derivative word from the Latin 'Lex' (law) and can be found in innumerable words and combinations. Another of Applicant's marks also employs a derivative word, "Lexar" using the portion 'lex' from the Latin language. 'Lex' is an extremely common portion of numerous foreign and English language words. It is used as part of

numerous marks and products. One example is the trademark registration for "Lexus" for herbicides used and registered in the United Kingdom, throughout Europe, and elsewhere where Opposers' trademark, Lexus, coexists with this crop protection product. Additionally, there are numerous "Lex" products such as Applicant's 'Lexar' , a third-party ag.-chemical "Lexard", currently being sold in the U.S. and elsewhere.

**INTERROGATORY NO. 38**

Identify with specificity the sources referred to on the Internet that evidenced the use of LEXUS marks by others, including Opposers' use, referred to in Applicant's Answer to Interrogatory No. 8.

**RESPONSE:**

Objection. See General Objections. However, without waiving said objections, Applicant cannot identify the thousands of 'hits' on any internet search reflecting uses of the word 'Lexus' including those employed by Opposers and other businesses some of which both Applicant and Opposers have identified in their discovery production. However, Applicant employed 'google', yahoo, AOL, and other web services in its internet searches.

**INTERROGATORY NO. 39**

Identify with specificity the "world-wide trademark databases" referred to in Applicant's Answer to Interrogatory No. 8 that provided information regarding uses of the LEXUS mark by others, including Opposers' use.

**RESPONSE:**

Objection. See General Objections. However, without waiving said objections, Applicant ran searches in various trademark databases including the U.S. PTO, European (CTM),

Australian, New Zealand, South America, Asia, and elsewhere. Those searches produced numerous 'hits' for marks similar or identical to "Lexus" owned or sought by entities other than the parties hereto. One example is the trademark registration for "Lexus" for herbicides used and registered in the United Kingdom, throughout Europe, and elsewhere where Opposers' trademark, Lexus, coexists with this crop protection product. Additionally, there are numerous "Lex" products such as Applicant's 'Lexar' , a third-party ag.-chemical "Lexard", currently being sold in the U.S. and elsewhere.

**INTERROGATORY NO. 40**

State the dates, if any, when Mr. Hans Steiner will be in the United States and where in the United States he will be.

**RESPONSE:**

Objection. See General Objections. However, without waiving said objections, Applicant is not aware of any current plans for Mr. Steiner to visit the U.S. and further that Mr. Steiner rarely travels to the United States and has no immediate plans to travel to the U.S.

**INTERROGATORY NO. 41**

State the basis for Applicant's belief that an attorney at a "previous law firm" referred to in Applicant's counsel's September 12, 2002 correspondence, was David Kera, as stated in Applicant's Answer to Interrogatory No. 19.

**RESPONSE:**

Objection. See General Objections. Opposers' request is irrelevant and inadmissible. Applicant is not aware of what is meant by "your" correspondence of September 12, 2002.

Applicant does recognize a letter sent by its counsel, not an employee of Applicant, which is irrelevant to both these oppositions and this Interrogatory. However, without waiving said objections, Applicant is unable to so identify said individual since he lacked the courtesy to identify himself but upon conversations between counsel for Opposers and Applicant's counsel, it is believed to be David Kera, Opposers' counsel herein. However, since the caller was both unethical and discourteous Applicant cannot affirm the identity of the caller referenced herein.

**INTERROGATORY NO. 42**

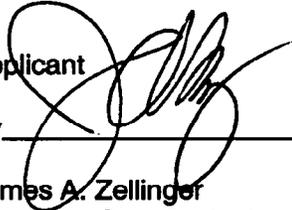
State the basis for the denial of each of Opposers' First Responses for Admissions that Applicant denied.

**RESPONSE:**

Objection. See General Objections. Applicant further objects on the grounds that to submit said responses would greatly exceed the permissible number of interrogatories permitted under the applicable Rules. Furthermore, Opposers' request evidence of a negative condition which is both illogical and impossible in some of their requests. Finally, Opposers' requests are obviously premature and erroneous since they request affirmations despite the fact that Opposers have already produced information (while additionally information is to be provided from other civil actions or under the terms of a confidentiality agreement) and Applicant has produced additional materials making the requests for admission moot.

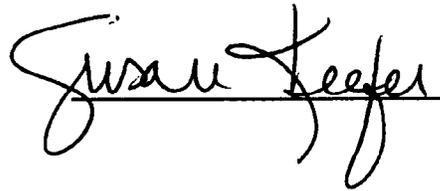
Applicant

By \_\_\_\_\_

  
James A. Zellinger  
Syngenta Crop Protection, Inc.  
410 Swing Rd.  
Greensboro, N.C. 27410

**VERIFICTION**

**SUSAN KEEFER** does hereby verify on behalf of Applicant that the above responses to Opposers' Second Set of Interrogatories, are true and accurate to the best of her knowledge.

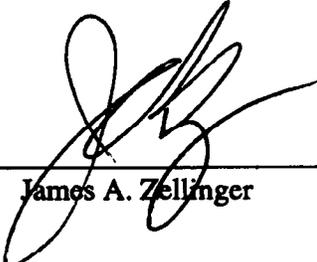
A handwritten signature in cursive script that reads "Susan Keefe". The signature is written in black ink and is positioned to the right of the verification text.

**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 Opposers' Second Set of Interrogatories to Opposers' 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 <sup>20</sup> day of August, 2004.

  
\_\_\_\_\_  
James A. Zellinger