

TTAB

James A. Zellinger
Trademark Counsel

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

syngenta

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

November 22, 2004

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

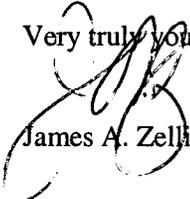
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*
Consolidated Opposition Nos: 157,206 & 159,578

Dear Sirs:

Please find enclosed APPLICANT'S RESPONSE TO OPPOSERS' REQUEST TO RESET DISCOVERY AND RESCHEDULE TESTIMONY pertaining to the above-referenced opposition. Please file in conjunction with same.

Thank you for your assistance with this matter.

Very truly yours,


James A. Zellinger

JAZ/sk
Encl.



11-24-2004

U.S. Patent & TMOc/TM Mail Rcpt Dt. #72

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' REQUEST
FOR RESET OF SCHEDULING ORDER

Applicant would object to Opposers' request for additional time and to reset the time periods within the Scheduling Order.

I. OPPOSERS' FALSE REPRESENTATION

Opposers make the outrageous and false representation to this Board that “ each party is withholding documents from production on the basis of confidentiality”. This is not true as Applicant has produced all documents in its possession related to Opposers’ discovery requests and is not withholding any documents on the basis of confidentiality or otherwise. On the grounds that Opposers have made this false representation, their request should be denied. For separate grounds, Opposers’ request should be denied since Opposers’ alleged and only basis that “follow-up discovery may be needed” is moot due to the lack of any production from Applicant allegedly requiring “follow-up discovery”. As there is now no basis for Opposers’ request, there is not any need to consider it.

Applicant, which is due both confidential and non-confidential production from Opposers, does not seek “follow-up discovery”.

II. SECOND RESET

The underlying request herein would be the second reset after the first was caused by Opposers earlier motions and requests. Despite their actions causing the initial resetting, Opposers have not pursued discovery in good faith (See Ex. 1-5, attached hereto). Any resetting of the dates set in the scheduling order will reward Opposers for their dilatory tactics and permit them to obtain a second reset due to said actions.

III. PREJUDICE TO APPLICANT

Opposers’ request as well as their persistent conduct of delay and obstruction (Ex. 1-5) has and will continue to harm Applicant by preventing the launch and use of its mark in commerce. The harm has risen from the inability of Applicant to market its goods under its

mark due to the opposition and challenge to Applicant's rights.

IV. DILATORY TACTICS

It is obvious by examination of earlier filed request of Opposers that they have adopted a course of delay and obstruction. This is demonstrated by Opposers delay in seeking execution of a protective order. Despite Applicant's request for a response made by letters on June 1st & 28, 2004. Opposers did not respond substantively until August 24, 2004, some 8 weeks later (See Ex.1-4).

V. OUTSTANDING DISCOVERY

There exists a large amount of non-confidential discovery requests that have not been addressed by Opposers (see Ex. 1&2). Applicant also notes that a large amount of non-confidential materials in the possession of Opposers and requested by Applicant has NOT been produced by Opposers (See Ex. 1; letter requesting production of materials in Opposers' possession and not produced to date). It should be further noted that Applicant is not delinquent in its discovery responses.

VI. CONCLUSION

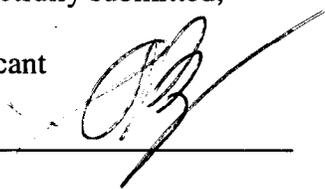
Applicant would move this Board to deny Opposers' request and that Opposers be ordered to cease their dilatory tactics.

Applicant would further move this Board that Opposers be ordered to fully respond to Applicant's discovery requests so as not to require Applicant file a motion seeking to compel long overdue materials.

Respectfully submitted,

Applicant

By

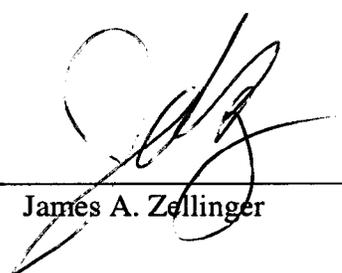

James A. Zellinger
Syngenta Crop Protection, Inc.
410 Swing Rd.
Greensboro, N.C. 27410

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 Motion to Reset Discovery and Reschedule Testimony to Opposers' attorneys 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 22d day of November, 2004.



James A. Zellinger

EXHIBIT 1



James A. Zellinger
Trademark Counsel

Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, NC 27409
Tel: (336) 632-7835
Fax: (336) 632-2012

October 8, 2004

SECOND NOTICE November 15, 2004

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

Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and
Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG*
Opposition No.: 157,206
Your Ref. 238096US-213-21

Dear Mr. Kera,

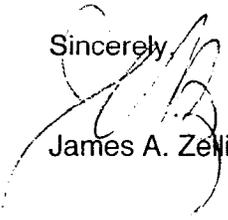
We cannot permit this delay to continue any further.

There are numerous outstanding documents that have not been produced to us such as those documents filed in conjunction with *Toyota v. Alements Lexus*, 102CV00013 (EDNY) which are not covered by any protective order.

These documents are well overdue.

Pursuant to 37 C.F.R. 2.120(e), this is Applicant's last attempt to resolve this blatant lack of production.

Sincerely,



James A. Zellinger

JAZ/sk

EXHIBIT 2

syngenta

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

September 17, 2004

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

Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*
Opposition No: 157,206
Your Ref. 238096US-213-21

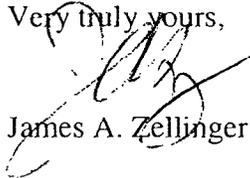
Dear Mr. Kera:

I note the delaying tactics of your letter dated September 10, 2004.

August does indeed follow July as July follows June when my initial letter was written. Please explain how your earlier letter responded to my letter of July 30th (sent again after no response before August 20th). I believe your late August letter refers to my letter of July 30th (when it actually addresses my letters of June 1st and June 28th), in an attempt to disguise the extremely late response which lead to my follow up letter of July 30th. Please explain how your August letter responds to any points in my letter of July.

Finally, regarding the last issue concerning paragraph 8 of the proposed protective order, the language is clear to me. Please explain what you do not understand about the language. You were unable to identify any objection, thus, the protective order should be signed. Obviously, this is yet another obstructionist tactic.

Very truly yours,


James A. Zellinger

JAZ/sk

EXHIBIT 3



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

May 26, 2004

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

Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*
Consolidated Opposition Nos: 157,206 & 159,578

Dear Mr. Kera:

I am in receipt of your letter of May 20, 2004, as of May 24. Said letter was not faxed and was sent by regular mail.

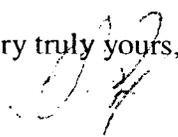
Your letter contains two (2) errors. The first is that the Board has "directed the parties to negotiate for a protective order to permit discovery to proceed". Second, you state that discovery is to proceed (commence) on May 30. The Order states otherwise. The Order requires production of all non-confidential materials on or before May 30. The Order allows new discovery to commence on May 21 with a deadline of May 30, 2004 for outstanding requests. The Order's instructions regarding a protective order relate only to confidential materials.

Obviously, this is an additional dilatory tactic.

This letter is an initial and final attempt to comply with 37 C.F.R. 2.120(e) and demand production of overdue responses. If a response to Applicant's discovery requests is not received by June 3, 2004, Applicant will file an additional motion to compel and/or motion to dismiss the opposition(s).

I note that you have neither e-mailed nor forwarded a diskette containing the draft stipulated protective order which had been included with your letter. I will forward my revisions as soon as possible.

Very truly yours,


James A. Zellinger

JAZ/sk

EXHIBIT 4



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

April 22, 2004

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

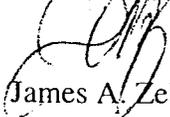
Re: *Toyota Jidosha Kabushiki Kaisha d/b/a Toyota Motor Corp. v. Syngenta Participations A.G.*
Opposition No. 91159578

Dear Mr. Kera:

Please note that Opposer's responses to Applicant's initial document requests and interrogatories are now overdue. Please note that this is a separate opposition than the earlier-filed opposition (No. 91157206) and not addressed or covered by the Board's Order of March 11, 2004.

This letter is undertaken to comply with 37 C.F.R. 2.120(e), prior to filing a motion to compel by Applicant. If we do not receive a response by April 29, 2004, we will assume that your client has decided not to respond to Applicant's discovery requests as required by the Board's scheduling Order of February 25, 2004.

Very truly yours,



James A. Zellinger

JAZ/sk

EXHIBIT 5



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

November 11, 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
Opposition No. 157,206

Dear Sir or Madam:

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

Thank you for your assistance with this matter.

Very Truly Yours,



James A. Zellinger
Trademark Counsel

JAZ/sk
encl.