

**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 SURREPLY TO OPPOSERS' MOTION TO RESET CLOSE OF  
DISCOVERY PERIOD AND TO RESCHEDULE TESTIMONY PERIODS**

Applicant would request permission to submit the following brief Surreply in order to address the inaccuracies in Opposer's Reply motion..

Opposers in their Reply apparently refer to Applicant's general objections as a basis for their reliance that discoverable confidential information is being withheld by

Applicant. This claim is made despite the complete lack of inquiry by Opposers to determine whether any such information exists but also in the face of Applicant's response. The response identifies all records including those between Applicant's various counsel which would be protected as privileged communications and not produced regardless of the entry of a stipulated protective order.

Next, Opposers take issue with Applicant's claim that there are a "large amount of documents" being withheld by Opposers and such description is an "exaggeration". This claim is again frivolous and underscores Opposers lack of production and obstruction in this matter. Opposers have failed to produce any documents relating to "Toyota v. Aliments Lexus, CV 02 0013(DGT; EDNY)". A copy of the docket sheet is attached hereto as Exhibit 1. This docket summary reflects what any attorney would evaluate as a "large amount of non-confidential materials". It is estimated at thousands of pages especially when including the other pending and prior legal actions.

Opposers then claim there is only this one matter ("only case"). This is another misrepresentation. Applicant has requested information on all litigation relating to Opposers and the marks at issue. Opposers themselves have identified another matter "Profile Cocktail Lounge" in Opposers' own interrogatories. (See Interrogatory No. 18; attached as Exhibit B to Opposers' Reply). This indicates their awareness of this other proceeding and the validity of Applicant's statement and request that there is a large amount of materials outstanding. It further indicates Opposers' failure to produce requested materials. It also indicates Opposers' continued misrepresentations to this Board as the request is not the "only case" as Opposers are well aware.

These two matters alone, not even including the many other legal proceedings in which Opposers are involved relating to the marks and subject to Applicant's discovery requests, clearly establishes that there is "a large amount of non-confidential materials" outstanding. These materials have not been produced.

The inclusion of the letter Exhibit (Ex 1) in Applicant's response was submitted to demonstrate Opposers' delay and obstruction in this matter but does, as Opposers recognize, demonstrate the failure of Opposers to produce many requested documents. Opposers' failure should not be the basis for further extensions or reset of the testimony and discovery periods as requested by Opposers

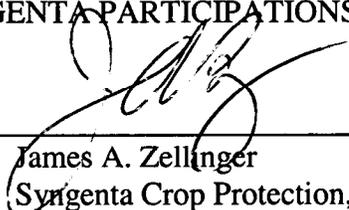
The extension and reset is obviously sought by Opposers to further delay these proceedings. (As demonstrated by Opposers waiting seven (7) weeks to respond to Applicant's letter; attached as Exhibit 1 in Applicant's response). Opposer has not identified any basis for their request except their own delay, negligence, and its misplaced reliance on Applicant's general objections. Applicant continues to be seriously harmed by the protraction of this matter.

Opposers should not be rewarded for their misrepresentations, delaying tactics, or failure to produce requested materials to the prejudice and harm of Applicant. Any reset or extension would encourage Opposers to continue with their delaying and obstructionistic tactics.

It should be further noted that, in the four (4) weeks since Opposers' request to reset the dates, Opposers have not sought to undertake any discovery or supply Applicant with the overdue production of those materials requested by Applicant.

APPLICANT  
SYNGENTA PARTICIPATIONS AG

By: \_\_\_\_\_



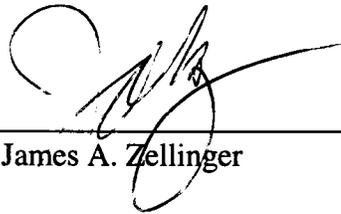
James A. Zellinger  
Syngenta Crop Protection, Inc.  
410 Swing Road  
Greensboro, NC 27409  
Tel. 336-632-7835  
Fax 336-632-2012

CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing APPLICANT'S SURREPLY TO OPPOSERS' MOTION TO RESET CLOSE OF DISCOVERY PERIOD AND TO RESCHEDULE TESTIMONY PERIODS 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 10 day of Dec., 2004.



A handwritten signature in black ink, appearing to read 'James A. Zellinger', is written over a horizontal line. The signature is stylized and cursive.

James A. Zellinger

EXHIBIT 1

**U.S. District Court  
Eastern District of New York (Brooklyn)  
CIVIL DOCKET FOR CASE #: 1:02-cv-00013-DGT-SMG**

Toyota Motor Sales, U.S.A., Inc. et al v. Aliments Lexus Inc. et al  
Assigned to: Judge David G. Trager  
Referred to: Magistrate-Judge Steven M. Gold  
Demand: \$0  
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 01/02/2002  
Jury Demand: None  
Nature of Suit: 840 Trademark  
Jurisdiction: Federal Question

**Plaintiff**

**Toyota Motor Sales, U.S.A., Inc.**  
*(a California corporation)*

represented by **Alan S. Cooper**  
Shaw Pittman LLP  
335 Madison Avenue  
New York, NY 10019  
(212) 603-6800  
*LEAD ATTORNEY*

**Alisa C. Key**  
Shaw Pittman LLP  
335 Madison Avenue  
New York, NY 11019  
(212)603-6800  
*LEAD ATTORNEY*

**Robert L. Plotz**  
Orans, Elsen & Lupert LLP  
875 Third Avenue  
28th floor  
New York, NY 10022  
(212) 586-2211  
Fax: 212-765-3662  
Email: rplotz@oellaw.com  
*TERMINATED: 03/04/2003*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Shaw Pittman**  
335 Madison Avenue  
New York, NY 10017  
212-603-6800  
*LEAD ATTORNEY*

**Plaintiff**

**Toyota Jidosha Kabushiki Kaisha**  
*(a Japanese Corporation)*  
*doing business as*  
Toyota Motor Corporation

represented by **Robert L. Plotz**  
(See above for address)  
*TERMINATED: 03/04/2003*  
*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Alan S. Cooper**  
(See above for address)

v.

**Defendant**

**Aliments Lexus Inc.**  
(a Canadian Corporation)  
doing business as  
Les Aliments Lexus Foods Inc.  
doing business as  
Lexus Foods Inc.

represented by **Edward F. Glynn, Jr.**  
Venable, Baetjer, Howard & Civiletti  
1201 New York Ave. N.W.  
Suite 1000  
Washington, DC 20005  
202-962-4800  
*LEAD ATTORNEY*

**Defendant**

**Howell Associates, Inc.**  
(a New York Corporation)  
doing business as  
Les Aliments Lexus Foods Inc.

represented by **Edward F. Glynn, Jr.**  
(See above for address)  
*LEAD ATTORNEY*

Date Filed	#	Docket Text
01/02/2002	1	Complaint filed and summons issued as to defendant(s) all defendants. Filing fee \$150.00. Receipt number: 255907.. Filed by Shaw Pittman on behalf of Toyota Motor Sales, U.S.A., Inc.. (Attachments: # 1 Civil Cover Sheet)(Bowens, Priscilla) (Entered: 01/02/2002)
01/09/2002	2	SUMMONS Returned Executed by Toyota Motor Sales, U.S.A., Inc.. Howell Associates, Inc. served on 1/3/2002, answer due 1/23/2002 filed by Shaw Pittman on behalf of Toyota Motor Sales, U.S.A., Inc.. (Greene, Donna) (Entered: 01/10/2002)
01/29/2002	5	Amended complaint. Filed by Shaw Pittman on behalf of Toyota Motor Sales, U.S.A., Inc.. (Related document(s)1) (Piper, Francine) (Entered: 02/07/2002)
01/30/2002	6	SUMMONS Returned Executed by Toyota Motor Sales, U.S.A., Inc.. Aliments Lexus Inc. served on 1/15/2002, answer due 2/4/2002 filed by Toyota Motor Sales, U.S.A., Inc.. (Piper, Francine) (Entered: 02/07/2002)
02/07/2002	3	Letter dated 1/22/02 from Edward F. Glynn to Judge Trager, dft request that it be granted leave to file a motion to dismiss for failure to state a claim. (Piper, Francine) (Entered: 02/07/2002)
02/07/2002	4	Letter dated 1/29/02 from Stephanie Brown and Alan S. Cooper to Judge Trager, suggesting that there is no basis for dfts to seek leave to file a motion to dismiss the complaint for failure to state a claim and accordingly no reason for a pre-motion conference. (Piper, Francine) (Entered: 02/07/2002)
02/07/2002		ECF registration forms have been mailed to Shaw Pittman, so that all filings may be

		made electronically. (Piper, Francine) (Entered: 02/07/2002)
02/12/2002	7	Letter filed by Edward F. Glynn, Jr. Esq. on behalf of defts to Judge Trager, dated 2/4/02, requesting that they be granted leave to file a Motion to Dismiss for failure to state a claim under Count IV of the Amended Complaint. (Fernandez, Erica) (Entered: 02/12/2002)
02/12/2002	8	Scheduling order Initial conference set for 5/2/2002 at 11:00 AM in Courtroom A. (Vasquez, Lea) (Entered: 02/12/2002)
02/21/2002	9	Answer to amended complaint filed by Edward F. Glynn Jr. on behalf of Aliments Lexus Inc., Howell Associates, Inc.. (Noh, Kenneth) (Entered: 02/25/2002)
02/21/2002		Jury demand filed by Edward F. Glynn Jr. on behalf of Aliments Lexus Inc., Howell Associates, Inc.. (Noh, Kenneth) (Entered: 02/25/2002)
02/21/2002	10	Disclosure of interested party filed by Aliments Lexus Inc., Howell Associates, Inc.. (Noh, Kenneth) (Entered: 02/25/2002)
02/21/2002	11	Motion for leave to appear pro hac vice <i>for William D. Coston and Barbara L. Waite</i> , filed by Edward F. Glynn Jr. on behalf of Aliments Lexus Inc., Howell Associates, Inc.. (Noh, Kenneth) (Entered: 02/25/2002)
03/08/2002	12	Order entered on 3/8/2002 granting motion for William D. Coston and Barbara L. Waite leave to appear pro hac vice. Fee of 50.00 - and Receipt 258577. c/m-ch (Lee, Tiffeny) (Entered: 03/08/2002)
05/02/2002	13	Minute Entry Dated: 5/2/2002 Calendar Entry Next conference scheduled for September 24, 2002 @ 10:00 a.m. (Vasquez, Lea) (Entered: 05/02/2002)
05/22/2002	14	Motion for leave to appear pro hac vice <i>admissions of Alan S. Cooper and Alisa C. Key</i> filed by Toyota Motor Sales, U.S.A., Inc.. (Greene, Donna) (Entered: 05/31/2002)
05/31/2002	15	Order entered on 5/31/2002 granting motion for leave to appear pro hac vice. Fee of 25.00 Receipt #262174. (signed by Judge Trager on 5/23/02). c/m (Greene, Donna) (Entered: 05/31/2002)
06/18/2002	16	Motion to strike <i>jury demand</i> filed by Alan S. Cooper on behalf of Toyota Jidosha Kabushiki Kaisha, Toyota Motor Sales, U.S.A., Inc.. (Piper, Francine) (Entered: 06/21/2002)
06/18/2002	17	Memorandum in support of <i>plttf's motion to strike jury demand</i> filed by Alan S. Cooper on behalf of Toyota Jidosha Kabushiki Kaisha, Toyota Motor Sales, U.S.A., Inc.. (Related document(s)[16]) (Piper, Francine) (Entered: 06/21/2002)
07/09/2002	18	Memorandum in opposition to <i>moton to strike jury demand</i> filed by Aliments Lexus Inc., Howell Associates, Inc.. (Greene, Donna) (Entered: 07/11/2002)
07/15/2002	19	Stipulated Protective Order, (Signed by Magistrate Judge Steven M. Gold on 7/10/02) (Piper, Francine) (Entered: 07/15/2002)
07/19/2002	20	Reply memorandum of law <i>in support of pltfs. motion to strike jury demand</i> filed by Toyota Jidosha Kabushiki Kaisha, Toyota Motor Sales, U.S.A., Inc.. (Greene, Donna) (Entered: 09/20/2002)

09/23/2002	21	Letter dated 9/18/02 from Alan S. Cooper to Mag. Gold, requesting an adjournment of the 9/24/02 scheduling conference until 12/10/02. (Piper, Francine) (Entered: 09/23/2002)
09/23/2002		Order; endorsed on letter document #21, the September 24th conference will instead be held by telephone on the same day with plttfs to arrange the call with all parties. (Signed by Mag. Gold on 9/20/02) (Piper, Francine) (Entered: 09/23/2002)
09/25/2002	22	Minute Entry Dated: 9/25/2002 Calendar Entry Status conference set for 12/10/2002 at 04:00 PM in Courtroom A. (Related documents(s) [16]) (Vasquez, Lea) (Entered: 09/25/2002)
11/08/2002	23	Letter dated 11/7/02 from Lea D. Vasquez, Secretary to USMJ Gold, to Counsel advising that the settlement conf scheduled for 12/10/02 @ 4pm will instead take place @ 2pm. (Noh, Kenneth) (Entered: 11/08/2002)
11/19/2002	24	Minute Entry for proceedings held before Steven M. Gold : Telephone Conference held on 11/14/2002. (Vasquez, Lea) (Entered: 11/19/2002)
01/21/2003	25	NOTICE of Appearance by Robert L. Plotz on behalf of Toyota Jidosha Kabushiki Kaisha, Toyota Motor Sales, U.S.A., Inc. (Greene, Donna) (Entered: 01/21/2003)
01/30/2003	26	Minute Entry for proceedings held before Steven M. Gold : Settlement Conference held on 1/29/2003.Next conference scheduled for March 10, 2003 at 4:00 p.m. (Vasquez, Lea) (Entered: 01/30/2003)
02/25/2003	27	Declaration of Robert L. Plots in Support of Orans, Elsen & Lupert's application to withdraw as co-counsel of record for plaintiff's.(Piper, Francine) (Entered: 03/04/2003)
03/04/2003	28	NOTICE OF CONSENT TO WITHDRAWAL OF CO-COUNSEL OF RECORD, that Orans, Elsen & Lupert LLP withdraws as co-counsel for plttfs, Toyota Jidosha Kabushiki Kaisha also also doing business as Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc; Shaw Pittman LLP shall continue to act as counsel of record herein.(Piper, Francine) (Entered: 03/04/2003)
03/04/2003	29	ORDER, the law firm of Orans, Elsen & Lupert LLP has withdrawn as co-counsel of record and Shaw Pittman LLP remains counsel of record for plaintiff. (Signed by Judge David G. Trager on 2/28/2003) c/m (Piper, Francine) (Entered: 03/04/2003)
03/11/2003	30	Calendar Entry for proceedings held before Steven M. Gold : Settlement Conference held on 3/11/2003. Deft. to make pre-mn applic'n to Judge Trager by 3/21. Discovery not related to mn is stayed w/o prejudice to either party's seeking to lift stay in whole or in part for cause shown. Pls. application to depose formier officer of def before submitting opposition to mn granted. Written status report by 5/2. (Greene, Donna) (Entered: 03/13/2003)
05/01/2003	31	ORDER, endorsed on letter dated 4/29/03 from Barbara Waite to MJ Gold: Parties to provide an updated status report to the court by 6/2/03. Signed by Judge Steven M. Gold on 4/29/03. (Fahey, Lauren) (Entered: 05/01/2003)
06/04/2003	32	ORDER, (endorsed on letter dated 5/30/03 from Alan S. Cooper to Mag. Gold), Plaintiff's application requesting that the date for providing an updated status report be reset to 7/2/03 is granted. (Signed by Judge Steven M. Gold on 5/30/03). (Piper,

		Francine) (Entered: 06/04/2003)
06/12/2003	33	Minute Entry for proceedings held before David G. Trager: Pre Motion Conference held on 6/12/2003 via teleconference. Parties to submit briefing schedule. (Piper, Francine) (Entered: 06/17/2003)
08/28/2003	36	Copy of Pltfs. Application to issue Letter of Request Directed to Roger Guglia issued. (Greene, Donna) (Entered: 09/05/2003)
09/05/2003	34	Letter dated 8/1/03 from Barbara L. Waite to Mag. Gold, advising that parties are attempting to develop a briefing schedule for dft's summary judgment motion. (Piper, Francine) (Entered: 09/05/2003)
09/05/2003	35	Letter dated 8/31/03 from Barbara Waite to Mag. Gold, providing a status report. (Piper, Francine) Additional attachment(s) added on 9/5/2003 (Piper, Francine). (Entered: 09/05/2003)
09/16/2003	37	ORDER, (endorsed on letter dated 8/31/03 from Barbara Waite to Mag. Gold), Proposed motion schedule approved. Motion 10/2; Opposition 11/17; Reply 12/17. (Signed by Judge Steven M. Gold on 9/3/03). (Piper, Francine) (Entered: 09/16/2003)
10/03/2003	38	PRAECIPE - Counsel for defts. moved to the following new address: 575 Seventh Street, N.W., Washington, DC 20004. (Greene, Donna) (Entered: 10/14/2003)
11/24/2003	39	Letter dated 11/18/03 from Alan Cooper to Barbara Waite, confirming that the original and two copies of pltff's Memorandum in Opposition to dft's motion for summary judgment and related papers were served yesterday by hand delivery. (Piper, Francine) (Entered: 11/24/2003)
12/17/2003	40	MOTION for Summary Judgment by Aliments Lexus Inc., Howell Associates, Inc.. (Piper, Francine) (Entered: 12/23/2003)
12/17/2003	41	MEMORANDUM OF LAW in Support of re [40] MOTION for Summary Judgment by Aliments Lexus Inc., Howell Associates, Inc.. (Piper, Francine) (Entered: 12/23/2003)
12/17/2003	42	RULE 56.1 STATEMENT by Aliments Lexus Inc., Howell Associates, Inc.. (Piper, Francine) (Entered: 12/23/2003)
12/17/2003	43	Declaration of Allison S. Geoff In opposition to re [40] MOTION for Summary Judgment. (Piper, Francine) (Entered: 12/23/2003)
12/17/2003	44	REPLY MEMORANDUM OF LAW in Support of re [40] MOTION for Summary Judgment by Aliments Lexus Inc., Howell Associates, Inc.. (Piper, Francine) (Entered: 12/23/2003)
12/17/2003	45	MEMORANDUM in Opposition to re [40] MOTION for Summary Judgment by Toyota Jidosha Kabushiki Kaisha, Toyota Motor Sales, U.S.A., Inc.. (Piper, Francine) (Entered: 12/23/2003)
12/17/2003	46	RULE 56.1 STATEMENT by Toyota Jidosha Kabushiki Kaisha, Toyota Motor Sales, U.S.A., Inc.. (Piper, Francine) (Entered: 12/23/2003)
12/17/2003	47	Declaration of Martin L. Smith in opposition to [40] MOTION for Summary Judgment (Piper, Francine) (Entered: 12/23/2003)

12/17/2003	48	Declaration of Annabel L. Bybee in Opposition to re [40] MOTION for Summary Judgment. (Piper, Francine) (Entered: 12/23/2003)
06/04/2004	52	Minute Entry for proceedings held before David G. Trager : Status Conference held on 6/4/2004. (Court Reporter Diana Pereira.)Counsel for all sides present. motion hearing held. Motion denied. (Greene, Donna) (Entered: 06/28/2004)
06/15/2004	50	Minute Entry for proceedings held before Steven M. Gold : Telephone Conference held on 6/15/2004. Counsel will submit letter by 6/25 either seeking a settlement conf. or proposing a joint discovery plan. The court will schedule a conf. accordingly. (Glenn, Marilyn) (Entered: 06/17/2004)
06/16/2004	49	ORDER denying [40] Motion for Summary Judgment. Hard copies mailed from chambers. Signed by JudgeDavid G. Trager on June 14, 2004. (Glenn, Marilyn) (Entered: 06/16/2004)
06/22/2004	51	ORDER setting telephone conference for 6/15/04 promptly at 3:30 before Mag. Gold. Signed by Judge Steven M. Gold on 6/9/04. (Greene, Donna) (Entered: 06/22/2004)
07/08/2004	53	ORDER endorsed on letter dated 6/24/04 from Alan S. Cooper to Mag. Gold. The proposed schedule is approved. The court will hold a conference to address the status of discovery, the possibility of settlement, and anticipated motion practice on 1/20/05 at 10:00 . Signed by Judge Steven M. Gold on 6/24/04. (Greene, Donna) (Entered: 07/08/2004)
09/28/2004	54	Letter from Tomoko Onozawa, Law Clerk to Judge Trager dated 9/22/04 Re: ECF Filing. (Greene, Donna) (Entered: 09/28/2004)
09/28/2004	55	SCHEDULING ORDER:A telephone conference has been scheduled for 11:30 a.m. on October 19, 2004. (see attached Order). Signed by Judge Steven M. Gold on 09/28/2004. (Vasquez, Lea) (Entered: 09/28/2004)
10/22/2004		Minute Entry for proceedings held before Steven M. Gold : Telephone Conference held on 10/22/2004. Cooper for pl, Waite for def. Plaintiff's application to adjourn all prevuously set discovery dates by 60 days is granted. The conference prevuously set for Jan. 20 will be held instead at 2 pm on 3/24/05. (Gold, Steven) (Entered: 10/22/2004)
11/01/2004	56	ORDER setting another telephone conference at 3:00 on 10/22/04. Signed by Judge Steven M. Gold on 10/19/04. (Greene, Donna) (Entered: 11/01/2004)
11/17/2004	57	NOTICE by Toyota Jidosha Kabushiki Kaisha, Toyota Motor Sales, U.S.A., Inc. <i>Identification of Expert Witness and Filing of Expert Report</i> (Attachments: # <u>1</u> Affidavit Expert Declaration# <u>2</u> Expert Report# <u>3</u> Appendix Appendix 1 to expert report# <u>4</u> Appendix Appendix 2 to expert report# <u>5</u> Appendix Appendix 3 to expert report# <u>6</u> Certificate of Service)(Keenan, Richard) (Entered: 11/17/2004)
11/17/2004	58	SCHEDULING ORDER:A telephone conference has been scheduled for 10:30 a.m. on November 23, 2004. Signed by Judge Steven M. Gold on 11/17/2004. (Vasquez, Lea) (Entered: 11/17/2004)

PACER Service Center

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11/23/2004 10:46:33			
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<b>Billable Pages:</b>	5	<b>Cost:</b>	0.35



James A. Zellinger  
Trademark Counsel

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

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TTAB

December 10, 2004

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 2327  
Arlington, VA 22202

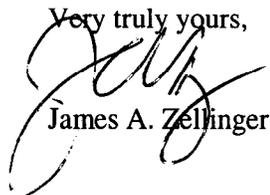
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*  
*Consolidated Opposition Nos: 157,206 & 159,578*

Dear Sirs:

Please find enclosed Applicant's Sur-Reply to Opposers' Motion to Resent Close of Discovery Period and to Reschedule Testimony Periods 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.



12-13-2004

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