

Attorney Docket No.: 238096US21



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

CONSOLIDATED

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

Opposers,)

v.)

SYNGENTA PARTICIPATIONS AG,)

Applicant.)

Opposition No.: 157,206
Mark: LEXUS
U.S. Appln. Serial No.: 78/145,546

Opposition No.: 159,578
Mark: LEXXUS
U.S. Appln. Serial No. 78/185,538

OPPOSERS' MOTION TO STRIKE

Opposers, Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Toyota"), move the Board to strike two improperly filed pleadings.

Applicant has filed, in direct contravention of Board rules, two pleadings that should be stricken from the record of this matter. On December 10, 2004, Applicant filed Applicant's Surreply to Opposer's Motion to Reset Discovery Period and to Reschedule Testimony Periods.

On December 14, 2004, Applicant filed a Motion to Add Exhibit to Applicant's Surreply to Opposers' Motion to Reset Close of Discovery Period and to Reschedule Testimony Periods. This Motion is not only improper because it is preconditioned on the legitimacy of Applicant's Surreply, but it also contains factual misrepresentations that Opposer will not enumerate here.

According to TBMP § 502.02(b) the filing of surreplies is not merely discouraged, it is expressly prohibited:



12-17-2004

No further papers (including surreply briefs) will be considered by the Board, and any such papers filed in violation of this rule may be returned to the filing party.

TBMP § 517; 37 CFR 2.127(a).

Applicant's Surreply and its motion to supplement its Surreply should be given no consideration and should be returned to Applicant they violate the Trademark Rules of Practice. The Board has found this remedy to be appropriate where a party ignores the plainly stated rules regarding *inter partes* motion practice. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1553 (TTAB 2000)(Board ordering the return of improperly filed surreply without consideration).

Accordingly, Toyota respectfully requests that its Motion to Strike be granted and that Applicant's two improper filings be stricken from the record and returned to Applicant.

Respectfully submitted,

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

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Date: Dec. 17, 2004
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S MOTION TO STRIKE** was served on counsel for Applicant, this 17th day of December, 2004, by sending same via First Class mail, postage prepaid, to:

James A. Zellinger, Esquire
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