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Filing date: **03/31/2005**

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

Proceeding	91157206
Party	Plaintiff Toyota Jidosha Kabushiki Kaisha, t/a Toy ,
Correspondence Address	David J. Kera Oblon, Spivak, McClelland, Maier & Neust 1940 Duke Street Alexandria, VA 22314
Submission	Opposers' Response to March 11, 2005 Board Order
Filer's Name	Amy Sullivan Cahil
Filer's e-mail	acahill@oblon.com, tmdocket@oblon.com
Signature	/Amy Sullivan Cahill/
Date	03/31/2005
Attachments	238096us.PDF (12 pages)

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

Toyota Jidosha Kabushiki Kaisha,)	
t/a Toyota Motor Corporation,)	
and)	
Toyota Motor Sales, U.S.A., Inc.,)	
)	
Opposers)	
)	
v.)	
)	
Syngenta Participations AG,)	
)	
Applicant)	
)	

CONSOLIDATED

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' RESPONSE TO MARCH 11, 2005 BOARD ORDER

Opposers, Toyota Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc., submit this filing in response to the Board's Order dated March 11, 2005.

In its Order ruling on the parties' pending motions addressing the entry of an appropriately worded protective order, the Board wrote:

Opposers' position is that 'if a party offers in evidence only a part of a confidential document produced by an adverse party, the remedy is not to object to admissibility, but to offer the entire document.' **The Board agrees.**

...

Accordingly, applicant's controversial sentence is unnecessary.

Board's March 11, 2005 Order (emphasis added). The Board went on to direct the parties to put in place a protective agreement, within twenty days of mailing of the Order, or the Board would impose its own protective agreement set out in the appendix to the Board's manual of procedure.

On March 22, 2005, Opposers' counsel wrote to counsel for Applicant asking that in light of the Board's Order, Applicant agree to the entry of a protective order without the inclusion of the disputed and unnecessary language¹. Opposers' counsel specifically requested that Applicant's counsel correspond with Amy Sullivan Cahill, Esq., a colleague in his office, during his absence. See copy of letter to Applicant's counsel attached as Exhibit A.

When on March 31, 2005, counsel for Opposers had not received a response from counsel for Applicant, Opposers' counsel contacted Applicant's counsel by telephone. At that time she was informed that Applicant was unwilling to agree to enter Opposer's proposed protective order, given the late timing of the phone call.

Given the Board's finding that the language proposed by Applicant is unnecessary to the protective order and given Applicant's counsel's inability to agree to remove the controversial language, Opposers request that the Board enter Opposers' tendered protective order attached hereto as Exhibit B.

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
Oblon, Spivak, McClelland,
Maier, & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
Fax: (703) 413-2220
Attorneys for Opposers

¹ The dateline in Opposers' letter incorrectly shows February 24, 2005, but the attached facsimile confirmation page reflects the correct transmission date of March 22, 2005.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSERS' RESPONSE TO MARCH 11, 2005 BOARD ORDER** was served on counsel for Applicant, this 31st day of March, 2005, by sending via First Class mail, postage prepaid to,

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

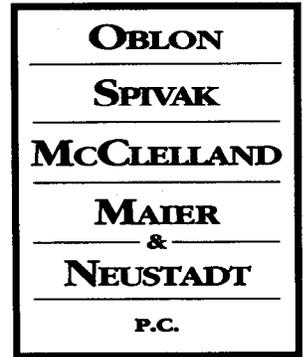
A handwritten signature in black ink, reading "D. Jean Barnett", is written over a horizontal line.

EXHIBIT A

February 24, 2005

VIA FACSIMILE

James A. Zellinger, Esquire
410 Swing Road
Greensboro, NC 27409



ATTORNEYS AT LAW

DAVID J. KERA
(703) 412-6456
DKERA@OBLON.COM

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

Dear Mr. Zellinger:

I refer to the Order of March 11, 2005 from the Trademark Trial and Appeal Board.

In view of the Board's Order, I request that you agree to the entry of a protective order without the inclusion of the language:

“material in evidence in this proceeding only upon consent of the other party or party not creating said dilutions.”

Since the deadline for agreeing on a protective order is March 31, 2005, when I shall be out of the country, I request that you correspond on this point prior to March 31 with our associate, Ms. Amy Cahill.

Sincerely yours,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

David J. Kera

DJK/ojb {I:\atty\DJK\213-238096US-113.doc}

* * * COMMUNICATION RESULT REPORT (MAR. 22. 2005 7:38PM) * * *

FAX HEADER: OBLON SPIVAK

TRANSMITTED/STORED : MAR. 22. 2005 7:37PM	FILE MODE	OPTION	ADDRESS	RESULT	PAGE
184	MEMORY TX		913366322012	OK	2/2

REASON FOR ERROR OR LINE FAIL
 E-1) HANG UP
 E-3) NO ANSWER

E-2) BUSY
 E-4) NO FACSIMILE CONNECTION

OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.
 1940 Duke Street
 Alexandria, Virginia 22314
 Telephone: (703) 413-3000
 Facsimile: (703) 413-2220

FACSIMILE TRANSMISSION

PLEASE DELIVER TO:

James A. Zellinger, Esquire
 410 Swing Road
 Greensboro, NC 27409

FACSIMILE NO.: 336-632-2012
FROM: David J. Kera
DATE: March 22, 2005
OUR REF.: 238096US-213-21

NUMBER OF PAGES INCLUDING COVER LETTER: 2

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CONTACT THE TRADEMARK GROUP AT (703) 413-3000 OR FAX INFORMATION REGARDING MISSING PAGES TO (703) 413-2220.

This facsimile may contain **PRIVILEGED AND CONFIDENTIAL** information intended only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the originating attorney above by telephone (collect call if necessary) and return the original facsimile to us at the above address via the U.S. Mail. Thank you.

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EXHIBIT B

2. To the extent that Material is so marked Confidential, such Material shall only be revealed to or used by Qualified Persons as provided for in paragraph 3 hereof and shall not be communicated in any manner, either directly or indirectly, to any person or entity not permitted to receive disclosure of Confidential Material pursuant to this Protective Order. Any copies of such Material, abstracts, summaries, or information derived therefrom, and any notes or other records recording, summarizing, or referring to confidential information, shall also be deemed Confidential and the same terms regarding confidentiality of these materials shall apply as to the originals, and shall thereafter be referred to as "Confidential Material." Such Confidential Material shall be used only for purposes directly related to these proceedings and any subsequent federal court actions arising from the same claims as herein, and for no other purpose whatsoever.

3. As used herein, the term "Qualified Persons" means:

(a) The following counsel for the parties, including said counsels' associate attorneys, legal assistants, paralegals and secretarial and clerical employees (including shorthand reporters):

(i) For Opposers: David J. Kera, Esquire and Amy Sullivan Cahill, Esquire of Oblon, Spivak, McClelland, Maier & Neustadt, P.C.; and Martin L. Smith, Esquire and Karen Rigberg, Esquire of Toyota Motor Sales, U.S.A., Inc.

(ii) For Applicant: James A. Zellinger, Esquire, Brian Reeve, Esquire, and Thomas Hamilton, Esquire of Syngenta Crop Protection, Inc. and Ned Branthover, Esquire of Robin, Blecker & Daly of New York, New York.

(b) Any independent experts not in the personal employ, regularly retained, or otherwise related to Opposers or Applicant, who have been employed or retained by a party or its attorney in connection with this action, may be given access to Confidential Material, for purposes directly related to this proceeding, and for no other purpose whatsoever, ten (10) days following opposing counsel's receipt of:

(i) the expert's executed Confidential Undertaking, in the following form:

The undersigned has read the Protective Order entered in this proceeding pursuant to Rule 26(c), Fed.R.Civ.P., and Trademark Rule 2.120(f), and confirms: (1) that he/she shall fully abide by the terms thereof; (2) that he/she shall not disclose the Confidential Material to or discuss the Confidential Material with any person who is not authorized pursuant to the terms of said Protective Order to receive the disclosure thereof; and (3) that he/she shall not use such Confidential Material for any purpose other than for the purposes of this proceeding;

(ii) a list of the expert's current affiliation;

and provided that opposing counsel has not objected in writing within the ten-day period to the expert's having access to Confidential Material.

4. Counsel in receipt of Confidential material from the other party shall notify counsel for the party of the disclosure of such Confidential Material to such Qualified Persons as designated in subsection (b) of paragraph 3 of this Protective Order. Each person designated and qualified in subsection (b) of paragraph 3 shall, in turn, hold such Confidential Material in confidence pursuant to the terms of this Protective Order.

5. Acceptance by a party of any information, document, or thing designated as Confidential shall not constitute a concession that the information, document or thing is confidential. Either party may contest a claim of confidentiality. In the event that the receiving party disagrees with the designation and marking by any producing party of any material as Confidential, the parties shall first try to resolve such dispute on an informal basis. If agreement cannot be reached between counsel, such dispute shall be presented to the Trademark Trial and Appeal Board for resolution.

6. The subject matter of all depositions given in connection with this action and the original and all copies of the transcripts of any such depositions shall be deemed to come within the term Confidential Material referred to in paragraph 2 of this Protective Order for a period ending twenty (20) working days after the transcript is received by the disclosing party's counsel. If testimony concerning Confidential Material is elicited at a deposition, counsel for either party may request that a designated portion of the transcript be treated as Confidential under this Protective Order. The stenographic reporter shall place the confidential testimony in a separately bound transcript marked CONFIDENTIAL, with page numbers corresponding to blank pages left in the deponent's non-confidential deposition transcript. On or before the twentieth (20th) working day after any such transcript is received by the disclosing party's counsel, such transcript may be designated and marked, in whole or in part, "Confidential" by counsel for the disclosing party, and the portions of the transcript(s) of the deposition(s) so marked shall be subject to the provisions of this Protective Order.

7. Where a discovery response, document, deposition transcript, or other tangible thing to be produced contains portions which have been designated Confidential, such Confidential Material shall be deleted therefrom before disclosing such Material to any person other than

Qualified Persons as designated in paragraph 3.

8. Deletions made from any Material in accordance with the terms of this Protective Order shall not affect the admissibility of any such Material in evidence in this proceeding.

9. If Confidential Material is to be made of record in this proceeding, it shall be submitted to the Board in a separate sealed envelope or other sealed container bearing the caption of this proceeding, the opposition number, and an indication of the general nature of the contents of the envelope or container, and, in large letters, the designation "CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER."

10. After this proceeding is finally completed, including all appeals, counsel for all parties shall return all Confidential Material which have remained confidential and copies thereof to the disclosing party.

SO ORDERED, this ____ day of _____, 2004.

TRADEMARK TRIAL AND
APPEAL BOARD

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