

TTAB

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April 26, 2005

U.S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

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 Sir or Madam:

Please find enclosed APPLICANT'S REPLY IN CONJUNCTION WITH ITS MOTION FOR RECONSIDERATION pertaining to the above-referenced consolidated opposition. Please file in conjunction with the same.

Thank you for your assistance with this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to be "JAZ", written over a horizontal line.

James A. Zellinger

JAZ/sk  
encl.



04-29-2005

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

TOYOTA JIDOSHA KABUSHIKI KAISHA	)	Opposition No. 157, 206
d/b/a TOYOTA MOTOR CORPORATION,	)	Serial No. 78/145,546
	)	Mark: Lexus
and TOYOTA MOTOR SALES, U.S.A., INC.	)	
	)	
Opposers	)	
	)	CONSOLIDATED OPPOSITION
	)	
	)	
v.	)	Serial No.: 78/185,538
	)	Filed: Nov. 15, 2002
	)	Mark: LEXXUS
	)	
	)	
SYNGENTA PARTICIPATIONS AG	)	
	)	
Applicant.	)	

**REPLY TO OPPOSERS' RESPONSE TO  
APPLICANT'S MOTION FOR RECONSIDERATION**

Applicant, Syngenta Participations AG, would submit the following brief reply.

As repeatedly practiced in their earlier responses, Opposers have submitted a non-responsive argument to much of Applicant's request. Opposers state that they "*have not retained an expert ...and have conducted no survey in connection with this matter*". This is completely contrary and irrelevant to Applicant's request. Applicant seeks said information in those other federal court proceedings identified in its motion. These other actions have concluded and at least one is under seal and the others have settlement agreements. The other materials sought likely exist, as their existence has not been denied (and specifically there are settlement

agreements under seal in one of the proceedings), and Opposers have not responded to this fact in their response.

Based on Opposers' lack of objection, as they fail to address and attempt to mislead, the Board's earlier Order should be modified to permit discovery of these materials.

Furthermore, the precedent cited by Applicant's in its motion, permit these materials to be the subject of discovery and production. Discovery of these materials should be permitted.

Opposers have also not contested that they failed to make a good faith effort to comply with 37 C.F.R. § 2.120(e). On this basis alone, Applicant's request should be granted.

Finally, the statements of Opposers' counsel, Mr. Kera, concerning his admitted failure to contact Applicant's counsel due to "consistently discourteous" conduct is truly outrageous. Applicant's counsel has had a mere two conversations with Kera. The second conversation was not a discussion but a demand by Kera utilizing a "take it or leave it" approach.

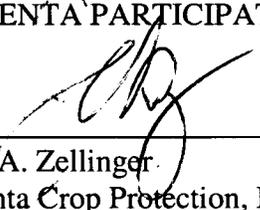
The other and initial call was one that occurred before the commencement of these proceedings where Kera failed to identify himself and demanded in a haranguing manner that Applicant discontinue its attempts to register the marks at issue. This unethical behavior coupled with failing to respond to correspondence or waiting eight (8) weeks to respond is merely another demonstration of Kera's and Opposers' obstructionistic and misleading tactics.

Applicant would move this Board to modify its Order and deny Opposers' motion in its entirety, as a sanction, on the grounds of Opposer's failure to comply with 37 C.F.R. § 2.120(e)(1), the false statements that they had so complied, and the false statements contained in their response.

WHEREFORE, upon the good cause shown, the Board's Order of March 11, 2005 should be modified to permit Applicant discovery of the limited items sought herein.

Respectfully submitted,

SYNGENTA PARTICIPATIONS AG

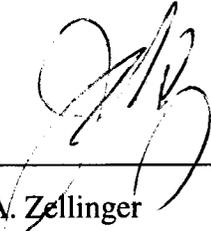
By:   
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CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing APPLICANT'S REPLY TO OPPOSERS' RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION to the 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 26th day of April, 2005.



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