

**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 )  
\_\_\_\_\_ )

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

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

**MOTION FOR ENTRY OF PROTECTIVE ORDER**  
**AND TO RESCHEDULE TESTIMONY PERIODS**

Opposers, Toyota Kabushiki Kaisha, t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (“Opposers”), request that the Board enter the Protective Order tendered with Opposers’ Response to March 11, 2005 Board Order and attached hereto as Exhibit A. Opposers’ efforts to resolve this matter with counsel for Applicant have been well documented.

Opposers further request that Opposers’ testimony period in chief be rescheduled to begin sixty (60) days after the date that the Board enters a Protective Order. This will allow Opposers time to serve confidential documents that have been withheld pending the entry of a Protective Order.



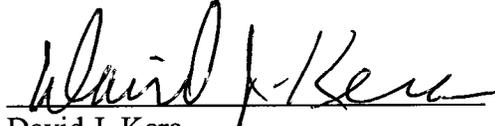
06-30-2005

On June 14, 2005, Opposers' counsel wrote to Applicant's counsel to suggest the rescheduling requested by this Motion. Please see Exhibit B. No response has been received.

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

Date:

*June 30, 2005*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **MOTION FOR ENTRY OF PROTECTIVE ORDER AND TO RESCHEDULE TESTIMONY PERIODS** was served on counsel for Applicant, this 30<sup>th</sup> day of June, 2005, by sending same via First Class mail, postage prepaid, to:

James A. Zellinger, Esquire  
Syngenta Crop Protection Inc.  
410 Swing Road  
Greensboro, North Carolina 27409

D. Jean Barrett

# **EXHIBIT A**



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 (20<sup>th</sup>) 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.

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TRADEMARK TRIAL AND  
APPEAL BOARD

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# **EXHIBIT B**



June 14, 2005

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*  
Opposition Nos.: 91/157,206 and 91/159,578  
Our Ref: 238096US-213-213-21

Dear Mr. Zellinger:

I received your June 1, 2005 letter. Documents withheld on the basis of attorney-client privilege or work product were identified in the Privilege Log and Supplemental Privilege Log produced on May 28 and June 30, 2004, respectively.

Please advise us of any legal authority for your contention that documents being withheld on the basis of confidentiality must be specifically identified. We are aware that the fact that confidential documents exist is not itself confidential information pursuant to TBMP § 414(1), and we have indicated that responsive confidential documents may exist where appropriate in response to interrogatories.

Finally, in the absence of a ruling on the protective order, we suggest filing a motion with the Board requesting that Toyota's testimony period open sixty days after the protective order is entered. This would give Toyota enough time to produce nonprivileged documents which have been withheld because they are confidential.

James A. Zellinger, Esquire  
238096US-213-213-21

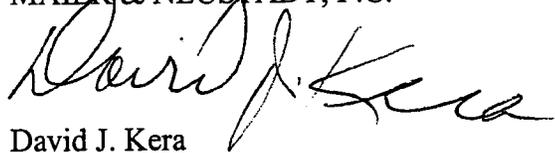
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Please let me know whether you consent to such an approach.

Sincerely yours,

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



David J. Kera

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