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July 11, 2005

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

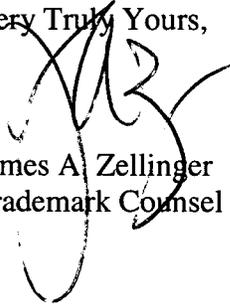
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*
Consolidated Opposition Nos: 157,206 & 159,578

Dear Sir or Madam:

Please find enclosed Applicant's MOTION TO DISMISS OPPOSITION 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,


James A. Zellinger
Trademark Counsel

JAZ/sk
encl.



07-13-2005

**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)	Serial No.: 78/145,546
)	
v.)	Filed: July 19, 2002
)	
SYNGENTA PARTICIPATIONS AG)	Mark: LEXUS
)	
Applicant.)	
)	
TOYOTA JIDOSHA KABUSHIKI KAISHA)	
d/b/a TOYOTA MOTOR CORPORATION,)	
)	
and TOYOTA MOTOR SALES, U.S.A., INC.)	
)	
Opposers)	Serial No.: 78/185,538
)	
v.)	Filed: Nov. 15, 2002
)	
SYNGENTA PARTICIPATIONS AG)	Mark: LEXXUS
)	
Applicant.)	

MOTION TO DISMISS OPPOSITION

Applicant, Syngenta Participations AG, would move this Board to dismiss the above Oppositions for Opposers' failure to comply with the Board's Order of March 11, 2005(Ex.1), compounded by Opposers' continuous failure to comply with the various discovery requests.

1. The Board's Order

On March 11, 2005, this Board issued its Order (Ex.1) requiring the parties to execute the Board's standard confidentiality agreement and protective order. Despite this specific instruction, Opposers have blatantly refused to comply with the instructions of the Board.

The Board was quite clear in its instructions, upon which Applicant relied, that "the parties have twenty days to put in place *a* protective agreement [NOT Opposers' protective agreement] or the Board *will* impose its own protective agreement" (at pg.3).

Applicant has complied with the Board's Order and Opposers have submitted no explanation other than the demand to dictate to the Board that Applicant and the Board must accept Opposers' version of a confidentiality agreement. If the Board and its orders are to be taken seriously, despite their disregard by Opposers' counsel, it must not permit its orders to be dictated by Opposers.

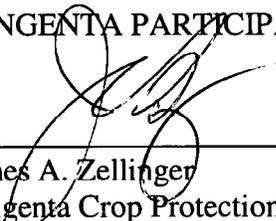
2. Prior Dilatory Acts By Opposer

This current and ongoing wilful disregard is a mere continuation of the dilatory and disruptive tactics undertaken by Opposers to obstruct these proceedings. The Board is well aware of the many (and now dozens) extension requests, prior motion to compel, and other disputes attributed solely to Opposers' actions. These factors coupled with the current flagrant non-compliance with the Board's Order are additional ground for dismissal as well.

3. Conclusion

Applicant would submit that the appropriate remedy for Opposers' wilful and continuous refusal to respond to Applicant's discovery requests coupled with the most recent wilful failure to comply with this Board's Order (Ex.1) is dismissal of these opposition proceedings.

SYNGENTA PARTICIPATIONS AG

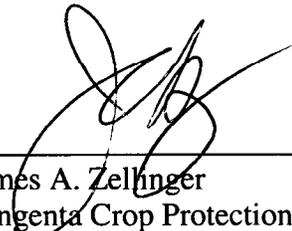
By: 
James A. Zellinger
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CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing APPLICANT'S Motion To Dismiss 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 11th day of July, 2005.



James A. Zellinger
Syngenta Crop Protection Corp.
410 Swing Rd.
Greensboro, N.C. 27409

EXHIBIT 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 11, 2005

MAR 17 2005

Opposition Nos. 91157206
91159578

Toyota Jidosha Kabushiki
Kaisha, t/a Toyota Motor
Corporation, and Toyota Motor
Sales, U.S.A., Inc.

v.

Syngenta Participations AG¹

Linda Skoro, Interlocutory Attorney

This case now comes up on the parties' motion for entry of a protective order, filed October 1, 2004, by opposer and filed November 19, 2004, by applicant². As the dispute continues, opposer filed another motion on March 1, 2005.

The parties are unable to agree to one specific provision in an otherwise complete protective agreement. The controversial sentence appears to be: "Material in evidence in this proceeding only upon consent of the other party or party not creating said deletions." Applicant

¹ Applicant is advised that it needs to include the opposition proceeding numbers in its caption to avoid delay in having its papers associated with the file.

² Opposers' motion to strike applicant's surreply, filed December 17, 2004, is hereby granted and applicant's motion to add exhibits to its surreply, filed December 17, 2004, is hereby denied as moot.

wants this language added to the sentence that reads:
"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." Applicant is concerned that without this controversial sentence, admissibility of confidential material will be affected, in that applicant may be forced to waive its rights to object to the admissibility of materials produced by opposers. Applicant requests either complete deletion of the entire paragraph or inclusion of its controversial sentence.

Opposers' position is that "if a party offers in evidence only 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.

The Federal Rules of Civil Procedure and Trademark Rule 2.122 govern admissibility of evidence. In similar matters, namely non-confidential evidence, the rules allow a party to enter any other portion of an admitted document if it believes that the partial admission, by its opponent, has been unfairly redacted. See 37 CFR § 2.120(j)(4) & (5). In such a circumstance, the appropriate response is submission of additional material, in this case as confidential, and not an objection to its admissibility, or its designation as

confidential. Any objection to admissibility is decided at final hearing. See TBMP § 702.02(c) (2d ed. rev. 2004).

Accordingly, applicant's controversial sentence is unnecessary. The parties have TWENTY days to put in place a protective agreement, or the Board will impose its own protective agreement that is set out in the appendix to the Board's manual of procedure and on the Board's website.

The Board now turns to opposers' most recent filing involving the continued request by applicant for opposers to produce copies of third-party litigation documents. Such information is discoverable. However, the only information which must be provided with respect to a legal proceeding is the names of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of the decision (if published). See *Interbank Card Ass'n v. United States National Bank of Oregon*, 197 USPQ 127, 128 (TTAB 1975) and *Johnson & Johnson v. Rexall Dug Co.*, 186 USPQ 167, 172 (TTAB 1975). Accordingly, opposers' motion is granted to the extent it does not have to produce copies of documents, but need only identify relevant litigation.

The trial dates are reset, including discovery, to accommodate the parties' supplementing of their responses

after the protective agreement is in place³. The trial dates are reset as follows:

Discovery period to close:	5/15/2005
30-day testimony period for party in position of plaintiff to close:	8/13/2005
30-day testimony period for party in position of defendant to close:	10/12/2005
15-day rebuttal testimony period to close:	11/26/2005

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

.oOo.

³ While applicant objected to the extension of the discovery period, claiming it was a dilatory tactic on the part of opposer, it states that there are still many outstanding discovery responses.