

TTAB

James A. Zellinger  
Trademark Counsel

Syngenta Crop Protection, Inc.  
410 Swing Road  
Greensboro, NC 27409

The Syngenta logo features the word "syngenta" in a bold, lowercase sans-serif font. A small, stylized leaf icon is positioned above the letter "y".

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jim.zellinger@syngenta.com

October 26, 2005

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

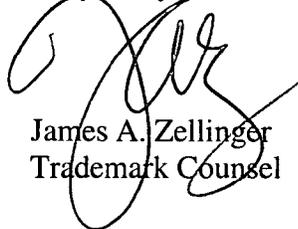
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*  
*Consolidated Opposition Nos: 157,206 & 159,578*

Dear Sir or Madam:

Please find enclosed APPLICANT'S MOTION TO COMPEL 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 read "JAZ", is written over the typed name and title.

James A. Zellinger  
Trademark Counsel

JAZ/sk  
encl.



10-28-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

**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. )	

**APPLICANT'S MOTION TO COMPEL**

Applicant, Syngenta Participations AG, moves to compel Opposer to respond to Applicant's discovery requests. (See Exhibits 1 -3 attached hereto). Opposer has failed to produce requested and relevant materials on the grounds that Applicant's counsel is 'in-house' counsel and refuses to produce materials pursuant to Applicant's discovery requests.

Pursuant to 37 CFR 2.120(e) Applicant has requested production (Exhibit 2& 3) but has received none. Opposer has stated its intention not to respond to Applicant's discovery requests. (Exhibit 1). Opposer has failed to respond to Applicant's specific demand for production (Exhibits 2 & 3).

I. Applicant's Discovery Requests

Applicant has served interrogatory requests, and document production requests upon Opposers. The particulars of the requests are not at issue and, thus, are not attached. However, Opposers have refused to produce certain materials on the grounds that Applicant's counsel is 'in-house' counsel and not eligible to view said materials (Ex.1).

2. Opposers' Refusal To Produce

Opposers refuse to supply Applicant's counsel with any materials now and any materials in the future that are deemed confidential by Opposers. It should also be noted that Opposers takes a very broad view on what it considers confidential which is nowhere supported by any legal precedent. The basis for Opposers' refusal is its unsupported claim that Applicant's counsel is in-house and that on that basis alone is not qualified to view these materials.

Opposers agree to produce said material but ONLY to 'outside counsel' for Applicant (Ex. 1, ¶ 4). Applicant's counsel herein is not 'in-house' counsel for Applicant.

In anticipation of Opposers' argument, Applicant submits that its counsel:

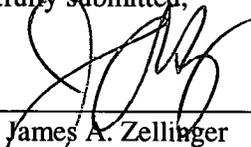
1. Is not "in-house" counsel for Applicant.
2. Is not an employee of Applicant.
3. Is not "in-house" counsel for or employee of Applicant's licensees.
4. Maintains a separate office, personnel, database, etc. than that for Applicant or the third party licensees of Applicant.
5. Has no other legal connection or barrier that would disqualify him as being able to act independently in this matter.
6. Has represented Applicant independently and represented Applicant in numerous proceeding before the Board against DIRECT COMPETITORS and been permitted examination of confidential information in those matters.

Furthermore, the parties hereto are not competitors, sell completely different products to different consumers in vastly different channels of trade, and Applicant has made no demands of Opposers for confidential patent or formula information.

Wherefore, Opposers' failure to respond constitutes sufficient grounds for this Board to issue an order compelling Opposers to fully and completely respond to Applicant's discovery requests.

Respectfully submitted,

By: \_\_\_\_\_

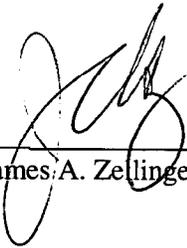
  
James A. Zellinger  
Syngenta Crop Protection, Inc.  
410 Swing Road  
Greensboro, North Carolina 27409  
(336) 632-7835  
fax (336) 632-2012  
ATTORNEY FOR APPLICANT

Date: October 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S MOTION TO COMPEL was served on counsel for Opposer this the 26 day of Oct. 2005, via first class mail, postage prepaid to:

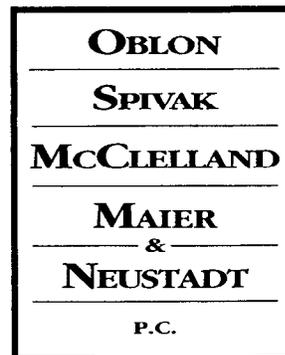
David J. Kera  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, VA 22314



---

James A. Zellinger

EXHIBIT 1



September 29, 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 No.: 91/157,206  
Mark: LEXUS V. LEXUS and LEXXUS  
Our Ref: 238096US-213-21

Dear Mr. Zellinger:

I refer to the Trademark Trial and Appeal Board's Order of September 20, 2005 and the Board's standard protective order, which was entered on September 7, 2005.

The Board's standard order, in Paragraph 1 under "Terms of Order", provides for three levels of confidentiality. The second level is "material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys." The third level is "trade secret/commercially sensitive", and is defined as "material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of Paragraph 4 and 5, by independent experts or consultants for the parties." Paragraph 3 provides that "outside counsel, but not in-house counsel shall have access to information designated as trade secret/commercially sensitive."

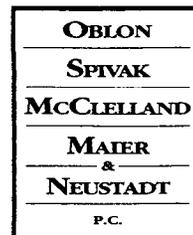
Toyota has information that is and will be designated as "trade secret/commercially sensitive." This information is available for disclosure as a response to discovery requests and is also highly likely to be introduced as evidence in support of the opposition.

In view of the terms of the Board's protective order, Toyota will disclose the "trade secret/commercially sensitive" information only to outside counsel for Syngenta Participations AG.

OCT 10 2005

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

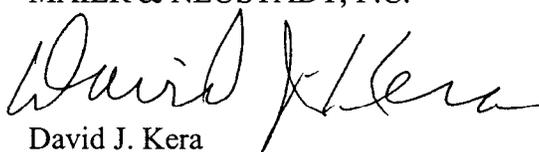
Page 2



I await the receipt from you of the name, address, and contact information for any outside counsel retained by Syngenta Participations AG in this proceeding.

Sincerely yours,

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



David J. Kera

DJK/ojb {I:\atty\Djk\213-238096US-It2.doc}

EXHIBIT 2



James A. Zellinger  
Trademark Counsel

Syngenta Crop Protection, Inc.  
410 Swing Road  
Greensboro, NC 27409

Tel 336-632-7835  
Fax 336-632-2012  
e-mail:  
jim.zellinger@syngenta.com

October 13, 2005

David J. Kera  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, VA 22314

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 Mr. Kera:

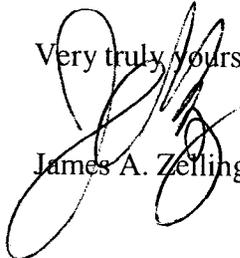
I am in receipt of your letter of September 29, 2005. You request my name and address in said letter but you are fully aware of that information. I am outside counsel for Applicant. I am neither an employee of Applicant or its parent, Syngenta A.G. I am also not an employee of Syngenta Crop Protection, Inc. ("SCPI") but maintain my own office at SCPI's headquarters.

Please supply the long overdue information immediately. Please confirm in writing within 5 days that the information will be produced.

I am also awaiting all information requested regarding the "Profile Lounge" case as well.

This letter is a request pursuant to 37 CFR 2.120(e).

Very truly yours,

  
James A. Zellinger

JAZ/sk

EXHIBIT 3



James A. Zellinger  
Trademark Counsel

Syngenta Crop Protection, Inc.  
410 Swing Road  
Greensboro, NC 27409

Tel 336-632-7835  
Fax 336-632-2012  
e-mail:  
jim.zellinger@syngenta.com

**SECOND REQUEST October 21, 2005**  
October 13, 2005

David J. Kera  
Oblon, Spivak, McClelland, Majer & Neustadt, P.C.  
1940 Duke Street  
Alexandria, VA 22314

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 Mr. Kera:

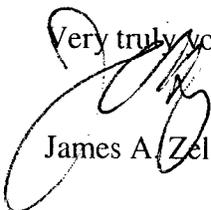
I am in receipt of your letter of September 29, 2005. You request my name and address in said letter but you are fully aware of that information. I am outside counsel for Applicant. I am neither an employee of Applicant or its parent, Syngenta A.G. I am also not an employee of Syngenta Crop Protection, Inc. ("SCPI") but maintain my own office at SCPI's headquarters.

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Very truly yours,

  
James A. Zellinger

JAZ/sk