

**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

91157206

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

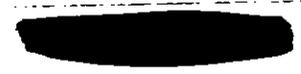
v. )

Filed: Nov. 15, 2002

SYNGENTA PARTICIPATIONS AG )

Mark: LEXXUS

Applicant. )



08-10-2006

U.S. Patent & TMO/TM Mail Rpt Dt. #34

**APPLICANT'S MOTION TO REOPEN DISCOVERY AND TO COMPEL**

Applicant, Syngenta Participations AG, moves to reopen the discovery period based on the lack of production to date regarding requested materials and the potential requirement for additional materials due to Opposers' dilatory conduct.

Applicant also seeks to compel long sought and relevant discovery materials that are neither confidential nor have been produced to date by Opposers (See Exhibit 1, attached hereto). Opposers have failed to produce requested and relevant materials, specifically survey and expert

evidence prepared in conjunction with litigation by Opposers in current federal court proceedings and possibly other survey evidence that Opposers have not disclosed.

Pursuant to 37 CFR 2.120(e) Applicant has requested production (Exhibit 2 -6) but has received none. Opposers have stated their intention not to respond to Applicant's discovery requests. (Exhibit 3).

#### I. Applicant's Discovery Requests

Applicant has served interrogatory requests, document production, and deposition notices upon Opposers. Opposers have failed to produce or identify responsive materials to these requests. Specifically, Opposers responded to Applicant's Interrogatories as follows:

#### **INTERROGATORY NO. 15:**

Identify all documents that constitute, relate to, or refer to any formal or informal investigation or consumer survey, including, but not limited to research, surveys, tests, or studies of any kind, regardless of whether prepared for or in anticipation of litigation, that Opposers have conducted, undertaken, instituted with consultants or experts, participated in or have knowledge of, and that pertain to the issues of confusion, likelihood of confusion, or the distinctiveness, regarding the use of the mark by either Opposers, Applicant, or any third party.

#### **ANSWER:**

"Opposers object to the use of the phrase "formal or informal investigation or consumer survey, including, but not limited to research, surveys, tests, or studies of any kind" as vague and ambiguous. Opposers further object on the basis that the information sought constitutes confidential and proprietary information that will not be produced prior to the entry of a suitable protective order by the Board. Opposers further object to this interrogatory as irrelevant to claims or defenses related to an issue of likelihood of confusion of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposers further object to this interrogatory as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposers will provide only that information in their possession which is sufficient to meet the needs of the interrogatory. To the extent that the interrogatory seeks information regarding use of the mark by Applicant or any third-party, Opposers object to the interrogatory as calling for information outside of Opposers' custody, possession or control.

Subject to the forgoing objections, Opposers refer Applicant to the business records produced in response to Applicant's First Request for Production of Documents from which this information may be derived or ascertained pursuant to Fed.R.Civ.P. 33(d). To the extent responsive information exists that is subject to the attorney-client privilege or that constitutes attorney work product, this information will not be provided." (Ex.1).

Opposer has refused to produce certain materials, specifically survey evidence prepared for litigation by Opposers in current federal court proceedings and possibly other survey evidence that Opposers have not disclosed to Applicant. In the matter of Toyota Motor Sales, et al v. Aliments Lexus Foods, Inc., et al; Civil Index # CV020013(DGT, EDNY 2002), survey and expert evidence has been prepared but none has been produced to Applicant (Ex. 11 & 4) .

Thus, there is little or no burden to Opposers as the materials sought would be easily found and produced by Opposers.

## II. Unavailability of Materials

Said materials are not available to Applicant nor have they been produced to date. These materials were to introduced in federal district court to support Opposers' claims of dilution which is their only viable claim herein. This evidence is extremely relevant to the issue of dilution as they could limit or expand Opposers' alleged trademark rights and could certainly lead to discoverable information not in the control or accessible to Applicant. They are not available to Applicant by other means. Furthermore, the information exists and is readily available to Opposers as stated in Exhibit 11:

3. Applicant was promised production of survey information from prior federal court proceedings including, but not limited to, Toyota et al v. Aliments Lexus, Inc. et al, Civil Action # CV02 0013 (EDNY) (see Ex.9& 10 ). Applicant was also promised production of the settlement agreement related thereto (Ex. 9&10).

4. I have spoken with counsel for the defendant in Toyota et al v. Aliments Lexus, Inc. et al, Civil Action # CV02 0013 (EDNY) , Barbara Waite of Venable, Baetjer, Howard, & Civeletti, who has advised b that a settlement agreement was finalized and filed in June of 2006 and further, that extensive survey information and expert reports were prepared for those proceedings by Opposers.

5. Upon information and belief, I understand that this survey and expert information has existed for over a year. Furthermore, pursuant to the information supplied by Ms. Waite, the survey evidence was to be introduced by Opposers during their federal court proceedings. (Ex.11).

In Johnson & Johnson v. Rexall Drug Company, 186 USPQ 167, 172 (TTAB 1975), discovery of identical information, as sought here, was permitted despite it being third-party litigation materials, "as it might tend to show limitations on opposers' rights or inconsistencies with opposers' statements in this proceeding" at 172 (emphasis added).

### III. Reopening of Discovery Is Warranted

Opposers have delayed in producing materials sought over two (2) years ago. One of the grounds submitted by Opposers for their refusal was that Applicant's counsel was allegedly 'in-house'. This refusal is contradicted by an earlier letter from Opposers (Ex. 9&10) consenting to such production. This letter (Ex. 9&10) addressed the issue of the release of all levels of confidential information (which was defined in the negotiated draft protective order and would cover the materials now sought) permitting counsel, other than Applicant's lead counsel, to view said materials.

More importantly, Opposers have delayed in producing this critical information until after the close of discovery and thereby thwarting reasonable and necessary follow up discovery relating to this critical (survey) evidence (See Ex. 2-8). This request also does not address the materials that have also not been produced on the grounds that Applicant's counsel is 'in-house' and Opposers' claim that he is not permitted to view said materials. Thus, this substantial material has not been examined by Applicant or its counsel and warrants the reopening of discovery to permit follow up requests relating solely to the materials withheld by Opposers until the present. (See Ex. 2-10).

### IV. Opposers' Promise

Counsel for Opposer has promised and represented to Applicant that said materials relating to survey information and settlement would be produced (Ex.9& 10). Applicant has relied on this representation and Opposers should be compelled to produce these materials.

### V. Reconsideration

If the grounds for withholding these materials (survey and settlement information) is based on confidentiality, and Applicant's sole counsel has been barred from viewing confidential materials, then Applicant would request reconsideration of the Board's decision limiting Applicant's sole counsel to examination of non-confidential materials. The survey evidence

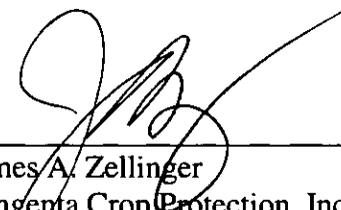
which would have been introduced in federal district court, as well as the settlement materials, are not trade secrets or confidential business materials and should be discoverable by Applicant and its counsel.

VI. Conclusion

Wherefore, Opposer's failure to respond constitutes sufficient grounds for this Board to issue an order compelling Opposer to fully and completely respond to Applicant's discovery requests (Ex.1). Opposers' conduct also should permit Applicant to reopen discovery that is limited to follow up requests relating to the withheld materials.

Respectfully submitted,

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



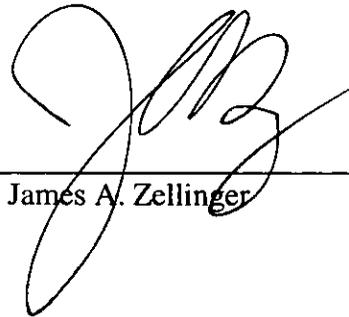
James A. Zellinger  
Syngenta Crop Protection, Inc.  
410 Swing Road  
Greensboro, North Carolina 27409  
(336) 632-7835  
fax (336) 632-2012  
ATTORNEY FOR APPLICANT

Date: August 8, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S MOTION TO COMPEL AND REOPEN DISCOVERY was served on counsel for Opposers this the 8th day of Aug. 2006, via first class mail, postage prepaid to:

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

A handwritten signature in black ink, appearing to read 'J. Zellinger', is written over a horizontal line. The signature is stylized and cursive.

James A. Zellinger

**EXHIBIT 1**

**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

MAY 12 2005

**OPPOSERS' OBJECTIONS AND ANSWERS TO**  
**APPLICANT'S THIRD SET OF INTERROGATORIES**

Pursuant to Rule 33, Fed.R.Civ.P. and Trademark Rules 2.116(a) and 2.120(d)(1), Opposers Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Opposers") provide the following objections and answers to Applicant's Third Set of Interrogatories ("Applicant's Interrogatories").

These objections and answers are based upon the best relevant information presently available to Opposers and the belief that the information is correct. These objections and answers are made without prejudice to the right of Opposers to provide additional or modified objections and answers should better or further information or belief subsequently become available to Opposers. These answers also are provided without prejudice to any right of Opposers to offer evidence on their behalf or to object to the relevance, competence or admissibility on any ground of any evidence or witness offered by Applicant; and these answers do not constitute an admission of competence, or admissibility of evidence, or a waiver of objection on any grounds.

## GENERAL OBJECTIONS

Opposers object to the Definitions and Instructions forming a part of Applicant's Third Set of Interrogatories and to each individual interrogatory as overly broad, harassing, unduly burdensome and as imposing greater obligations than those required by the Federal Rules of Civil Procedure and the Trademark Rules of Practice in that the burden or expense of the proposed discovery outweighs its likely benefit taking into account the importance of the proposed discovery in resolving the issues.

Opposers reserve their right to object to each individual interrogatory to the extent it seeks information that is proprietary and confidential and to provide such responsive, non-privileged information or documents only after a Stipulated Protective Order is entered by the Board.

Opposers further object to Applicant's Definitions and Instructions and to each individual interrogatory to the extent they seek information that is protected by the attorney-client privilege or the work-product doctrine. Such information will not be produced.

## OBJECTIONS AND ANSWERS

### INTERROGATORY NO. 15:

Identify all documents that constitute, relate to, or refer to any formal or informal investigation or consumer survey, including, but not limited to research, surveys, tests, or studies of any kind, regardless of whether prepared for or in anticipation of litigation, that Opposers have conducted, undertaken, instituted with consultants or experts, participated in or have knowledge of, and that pertain to the issues of confusion, likelihood of confusion, or the distinctiveness, regarding the use of the mark by either Opposers, Applicant, or any third party.

### ANSWER:

Opposers object to the use of the phrase "formal or informal investigation or consumer survey, including, but not limited to research, surveys, tests, or studies of any kind" as vague and

ambiguous. Opposers further object on the basis that the information sought constitutes confidential and proprietary information that will not be produced prior to the entry of a suitable protective order by the Board. Opposers further object to this interrogatory as irrelevant to claims or defenses related to an issue of likelihood of confusion of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposers further object to this interrogatory as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposers will provide only that information in their possession which is sufficient to meet the needs of the interrogatory. To the extent that the interrogatory seeks information regarding use of the mark by Applicant or any third-party, Opposers object to the interrogatory as calling for information outside of Opposers' custody, possession or control.

Subject to the forgoing objections, Opposers refer Applicant to the business records produced in response to Applicant's First Request for Production of Documents from which this information may be derived or ascertained pursuant to Fed.R.Civ.P. 33(d). To the extent responsive information exists that is subject to the attorney-client privilege or that constitutes attorney work product, this information will not be provided.

**INTERROGATORY NO. 16:**

Identify all documents that indicate or may indicate that Opposers are in the agricultural or crop protection business, or market agricultural or crop protection products to consumers.

**ANSWER:**

None.

**INTERROGATORY NO. 17:**

Identify all documents that demonstrate or indicate that any of Opposers' products are sold in the same retail or wholesale locations, or proximity to any location where agricultural or crop protection products are sold.

**ANSWER:**

Opposers do not sell any agricultural or crop protection products and are unable to answer this interrogatory about whether any of Opposers' products are sold in locations that are proximate to any locations where agricultural or crop protection products are sold on the basis that Opposer do not know where Applicant or any other company sells agricultural or crop protection products.

**INTERROGATORY NO. 18:**

Identify all witnesses Opposers intend to call as witnesses or from whom Opposers intend to obtain testimony.

**ANSWER:**

Opposers object to this interrogatory on the basis that they are not required to disclose the entirety of their proposed evidence in support of their case during discovery. Specifically, the Board has held that a party is not required to provide detailed evidence, such as a witness list, in response to discovery requests. *See, e.g., Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1657 (TTAB 2002).

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI KAISHA  
D/B/A TOYOTA MOTOR CORPORATION AND  
TOYOTA MOTOR SALES, U.S.A., INC.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed on \_\_\_\_\_

Toyota Motor Sales, U.S.A., Inc.

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

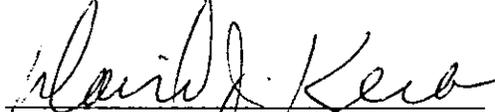
Name: \_\_\_\_\_

Toyota Motor Corporation

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

Name: \_\_\_\_\_

As to objections:

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 Opposer

Date: May 6, 2005

{!:\ATTY\DJK\213-238096US-INTOBJ3.DOC}

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSERS' OBJECTIONS AND ANSWERS TO APPLICANT'S THIRD SET OF INTERROGATORIES** was served on counsel for Applicant, this 6<sup>th</sup> day of May, 2005, by sending same via U.S. Mail, postage prepaid to:

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

  
\_\_\_\_\_

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

July 14, 2006

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 understand the EDNY case has been resolved and settled as of June 8, 2006. Thus, production of the previously requested information is long overdue.

The written "memorandum of agreement" or written understanding entered into on January 20, 2006, between your client and Aliments Foods is also both relevant and discoverable. It also falls under Applicant's discovery requests and must be produced. Please provide to me immediately along with all survey materials from said proceedings, as also previously requested.

This letter is an attempt to comply with 37 CFR Sec. 2.120(e).

Very truly yours,

A handwritten signature in black ink, appearing to read "James A. Zellinger".

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

July 14, 2006  
**SECOND REQUEST July 25, 2006**

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

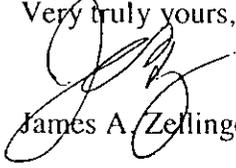
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*  
*Consolidated Opposition Nos: 157,206 & 159,578*

Dear Mr. Kera:

I understand the EDNY case has been resolved and settled as of June 8, 2006. Thus, production of the previously requested information is long overdue.

The written "memorandum of agreement" or written understanding entered into on January 20, 2006, between your client and Aliments Foods is also both relevant and discoverable. It also falls under Applicant's discovery requests and must be produced. Please provide to me immediately along with all survey materials from said proceedings, as also previously requested.

This letter is an attempt to comply with 37 CFR Sec. 2.120(e).

Very truly yours,  
  
James A. Zellinger

JAZ/sk

**EXHIBIT 4**

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

February 10, 2006

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 e-mail of February 6, 2006.

The written "memorandum of agreement" or written understanding entered into on January 20, 2006, between your client and Aliments Foods is both relevant and discoverable. It clearly falls under Applicant's discovery requests.

This letter is an attempt to comply with 37 CFR Sec. 2.120(e).

Very truly yours,

James A. Zellinger

JAZ/sk

EXHIBIT 5

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

May 5, 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.*  
*Opposition No: 157,206*  
*Your Ref. 238096US-213-21*

Dear Mr. Kera:

I am in receipt of Opposers' responses to Applicant's 3<sup>rd</sup> Set of Interrogatories as well as Opposers' supplemental responses to Applicant's production of document requests.

Please note that these responses fail to respond to Applicant's requests and the instructions included with said requests. Documents being withheld, for whatever reason such as lack of protective order or attorney-client privilege, must be identified if they exist regardless of whether they are produced. Please submit immediately responses which correct this deficiency.

Very truly yours,

James A. Zellinger

JAZ/sk

**EXHIBIT 6**

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

January 14, 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.*  
*Opposition No: 157,206*  
*Your Ref. 238096US-213-21*

Dear Mr. Kera:

I am in receipt of your letter of January 5, 2005.

Regarding "other cases" than those two listed in your letter, it is your clients' responsibility to both identify and produce all of the legal proceedings involving Opposers and the mark for the identified time period. You have been woefully delinquent in both identifying and producing these documents and materials especially the litigation involving the mark. I would note that these materials are overdue by well over a year overdue.

Regarding Applicant's "meager and irrelevant" production, there is very little material (all of which has been produced except confidential materials) in the U.S. as Applicant has filed for an intent-to-use application. Certainly, the materials produced relating to foreign markets where the various products co-exist under the identical marks, and to Applicant's sister mark "LEXAR", are certainly relevant to any issues of intent to trade off the non-distinctive use of the mark by Toyota.

As Opposers' testimony period will shortly commence, I expected at least a thirty (30) day notice for any planned testimony. Since I have not received any notice, I will assume Opposers are not intending to submit any testimony.

I also note that despite representations to the Board to the contrary, you have not used the last ninety (90) days to either serve discovery requests or respond to Applicant's long outstanding discovery requests.

Applicant will submit testimony and sufficient notice will be provided.

Very truly yours,

James A. Zellinger

JAZ/sk

EXHIBIT 7



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

November 28, 2005

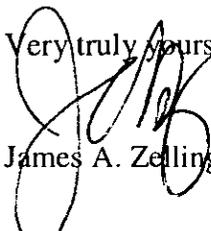
David J. Kera  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, VA 22314

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 have yet to receive any survey information including what has been offered in the matter of Toyota v. Aliments Lexus Inc. (EDNY; 02CV 0013[DGT]). Please supply the long overdue information immediately. Please confirm in writing within 5 days that the information will be produced.

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

Very truly yours,  
  
James A. Zellinger

JAZ/sk

EXHIBIT 8



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

January 30, 2006

**SECOND REQUEST APRIL 3, 2006**

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

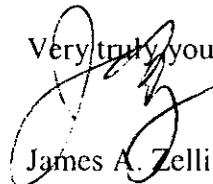
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*  
*Consolidated Opposition Nos: 157,206 & 159,578*

Dear Mr. Kera:

Included in Applicant's discovery requests was a demand for all settlement agreements. This demand would include the matter of *Toyota v. Aliments Lexus Inc.*, (EDNY; 02CV 0013[DGT]). Please supply the long overdue information immediately. Please produce the information within 5 days or I will assume it will not be produced.

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

Very truly yours,



James A. Zellinger

JAZ/sk

EXHIBIT 9



November 30, 2005

James A. Zellinger, Esquire  
Trademark Counsel  
Syngenta Crop Protection Inc.  
410 Swing Road  
Greensboro, NC 27409

ATTORNEYS AT LAW

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

---

Re: *Toyota Jidosha Kabushiki Kaisha, via Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. v. Syngenta Participations AG.*  
Opposition No.: 91/157,206  
Mark: LEXUS V. LEXUS  
Our Ref: 238096US-213-21

---

Dear Mr. Zellinger:

When the survey documents are in hand, I shall send them to you.

Sincerely yours,

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

David J. Kera

DJK/ojb {I:\atty\Djk\213-238096US-It4.doc}

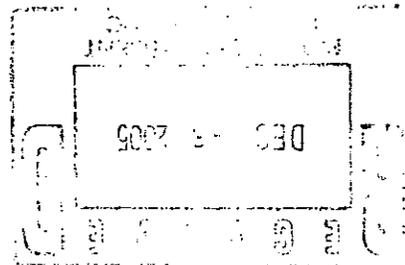


Exhibit 10



April 7, 2006

James A. Zellinger, Esquire  
Trademark Counsel  
Syngenta Crop Protection, Inc.  
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 v. Syngenta Participations AG*  
Opposition No.: 91/157,206  
Mark: LEXUS V. LEXUS and LEXXUS  
Our Ref: 238096US-213-21

Dear Mr. Zellinger:

The answer to your second request dated April 3, 2006 is that there is, as of this date, no written agreement between Toyota and Aliments Lexus Inc.

I shall not produce to you "attorneys eyes only" documents absent an Order from the TTAB.

Sincerely yours,

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

David J. Kera

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

APR 12 2006

Exhibit 11

**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 )

v. )

SYNGENTA PARTICIPATIONS AG )

Applicant. )

Serial No.: 78/145,546

Filed: July 19, 2002

Mark: LEXUS

TOYOTA JIDOSHA KABUSHIKI KAISHA )  
d/b/a TOYOTA MOTOR CORPORATION, )

and )

TOYOTA MOTOR SALES, U.S.A., INC. )

Opposers )

v. )

SYNGENTA PARTICIPATIONS AG )

Applicant. )

Serial No.: 78/185,538

Filed: Nov. 15, 2002

Mark: LEXXUS

**AFFIDAVIT**

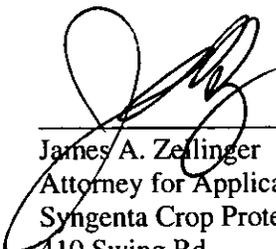
James A. Zellinger, being duly sworn, deposes and states as follows:

1. I am counsel for Applicant and represent Applicant in the above captioned matter.
2. Applicant has complied with 37 CFR 2.120(e) by numerous letters to Opposers' counsel including two (2) recent letters (Exhibits 2 & 3).
3. Applicant was promised production of survey information from prior federal court proceedings including, but not limited to, Toyota et al v. Aliments Lexus, Inc. et al, Civil Action # CV02 0013 (EDNY) (see Ex.9& 10 ). Applicant was also promised production of the settlement agreement related thereto (Ex. 9&10).

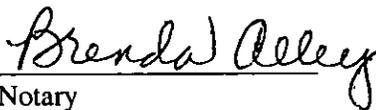
4. I have spoken with counsel for the defendant in Toyota et al v. Aliments Lexus, Inc. et al, Civil Action # CV02 0013 (EDNY) , Barbara Waite of Venable, Baetjer, Howard, & Civeletti, who has advised b that a settlement agreement was finalized and filed in June of 2006 and further, that extensive survey information and expert reports were prepared for those proceedings by Opposers.

5. Upon information and belief, I understand that this survey and expert information has existed for over a year. Furthermore, pursuant to the information supplied by Ms. Waite, the survey evidence was to be introduced by Opposers during their federal court proceedings.

This statement is made freely and voluntarily and under the penalty of perjury.

  
James A. Zellinger  
Attorney for Applicant  
Syngenta Crop Protection, Inc.  
410 Swing Rd.  
Greensboro, N.C. 27410

SWORN to before me this 03 day of Aug., 2006

  
Notary

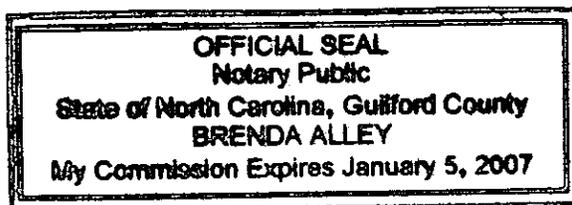


Exhibit 12

EXHIBIT 13

EXHIBIT 14

EXHIBIT 15

EXHIBIT 16