

Attorney Docket No.: 238096US-21

TTAB  
NO FEE



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

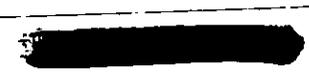
Toyota Jidosha Kabushiki Kaisha,	)	
t/a Toyota Motor Corporation,	)	
	)	Opposition No.: 157,206
-and-	)	U.S. Appln. Serial No.: 78/145,546
	)	Mark: v. LEXUS
Toyota Motor Sales, U.S.A., Inc.,	)	
	)	
Opposers	)	
	)	
v.	)	Opposition No. 159,578
	)	U.S. Appln. Serial No.: 78/185,538
Syngenta Participations AG,	)	Mark: v. LEXXUS
	)	
Applicant	)	

**OPPOSERS' REPLY TO APPLICANT'S OBJECTION TO OPPOSERS'**  
**REQUEST TO RESET TESTIMONY PERIOD**

Opposers hereby reply to Applicant's objection to Opposers' request to reset the testimony period to run from September 1, 2006 to September 30, 2006.

Applicant has, in the effect, mooted Opposers' motion to reset their testimony period by the filing of Applicant's motion to reopen discovery and to compel, which was filed and served on August 8, 2006, two days earlier than the filing and service dates of Applicant's objection to the request to reset Opposers' testimony period.

Applicant's protestation of reliance on the Board's Order of June 27, 2006 "in preparation of the Testimony periods and availability of its sole counsel" rings false in the light of Applicant's attempt, however baseless it may be, to reopen discovery. Since discovery precedes testimony, Applicant's motion compelled Opposers' to move to



08-24-2006

suspend proceedings until after Applicant's motion to reopen and to compel is determined by the Board. Applicant should have realized that this would be the result of its motion to reopen discovery. Applicant's own action in delaying proceedings by its motion to reopen and to compel effectively refutes Applicant's argument that it relied on the dates set by the Board's last trial order in scheduling the availability of Applicant's witnesses and, the availability of Applicant's sole counsel for opposers' testimony period and in planning the potential launch of Applicant's products to be sold under the disputed mark, (actually two marks, LEXUS and LEXXUS, are disputed).

Applicant's own action in delaying the proceeding by its motion also refutes its argument that its sole counsel is unavailable for the majority of dates proposed by Opposers' in their request, which in any event is now a moot point.

It should also be pointed out that Applicant had made no plans to travel to California for Opposers' testimony period. On August 7, 2006, Applicant's attorney wrote a letter to Opposers' attorney stating that Applicant's attorney would be attending the testimony of Opposers' witnesses by telephone. A copy of that letter dated August 7, 2006 is attached as Exhibit A.

I also attach as Exhibit B the letter dated August 3, 2006 from Applicant's attorney in which he stated "Applicant would object to any testimony being taken until outstanding discovery is produced such as the long outstanding survey and expert information ... until this information is received as previously promised, Applicant cannot consider your request to change the testimony period". In fact, Opposers' served their second supplemental objections and responses to Applicant's requests for production of documents on August 4, 2006, as was pointed out in Opposers' response

served and filed on August 17, 2006, to Applicant's motion to reopen discovery and to compel.

Apart from the unreasonable and unrealistic assumptions and statements evinced by section 1 on page 2 of Applicant's objection to the motion to reset the testimony periods, the paper as a whole is yet another example of Applicant's own delaying tactics while, at the same time, baselessly accusing Opposers of delaying tactics and "obstructionistic conduct". As Applicant's attorney should know, 37 C.F.R. §2.120(e) requires a conference only prior to a motion to compel discovery, not prior to a motion to reset testimony periods.

Since the motion to reset testimony periods is moot because testimony periods cannot be reset until after the disposition of Applicant's motion to reopen discovery, the next scheduling order from the Board should be a suspension of proceedings until after the discovery question is decided.

Respectfully submitted,

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

By:

  
David J. Kera  
Oblon, Spivak, McClelland,  
Maier, & Neustadt, P.C.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 413-3000  
Fax: (703) 413-2220  
Email: [Dkera@oblon.com](mailto:Dkera@oblon.com)

Date: August 24, 2006  
DJK/ojb {I:\ATTN\ADJK\213-238096US-MO4.DOC}

# **EXHIBIT A**



Syngenta Crop Protection, Inc. <sup>Kera</sup> Tel 336 632 6000  
James A. Zellinger  
Trademarks Counsel  
www.syngenta.com  
Syngenta Crop Protection, Inc.  
410 Swing Road  
Greensboro, NC 27409

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

August 7, 2006

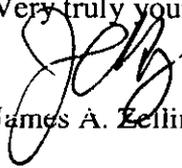
David J. Kera  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, VA 22314

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:

Please note that I will be attending the testimony of any of Opposer's witnesses by telephone. Please supply me with location, date, time and telephone information.

Very truly yours,

  
James A. Zellinger

JAZ/sk

**RECEIVED**

AUG 09 2006

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

# **EXHIBIT B**

 syngenta

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

*Kera*

August 3, 2006

**RECEIVED**

AUG 07 2006

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

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

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

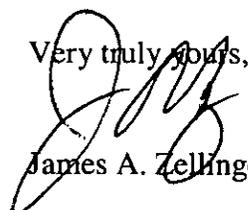
Dear Mr. Kera:

I am in receipt of your facsimile of August 1 (which I received on August 2). Applicant would object to any testimony being taken until outstanding discovery is produced such as the long outstanding survey and expert information (months, if not years overdue) and the Lexus-Aliments settlement information (months overdue). Until this information is received as previously promised, Applicant cannot consider your request to change the testimony period.

I also note the less than 1 week notice without specific dates or locations concerning Opposers' testimony.

Please provide this information to me and we will consider your request.

Very truly yours,

  
James A. Zellinger

JAZ/sk

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSERS' REPLY TO APPLICANT'S OBJECTION TO OPPOSERS' REQUEST TO RESET TESTIMONY PERIOD** was served on counsel for Applicant, this 24<sup>th</sup> day of August, 2006, by sending same via U. S. mail and postage prepaid, to:

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

  
\_\_\_\_\_