

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 OBJECTION TO OPPOSERS' REQUEST TO SUSPEND PROCEEDINGS

Applicant would object to Opposers' request and submit that Applicant has relied on the Boards' Order of June 27, 2006 in preparation of the Testimony periods and availability of its sole counsel.

Opposers' counsel has failed to contact Applicant or its counsel regarding their current request and has failed to comply with 37 CFR 2.120(e).

08-25-2006

I. Opposers' Request

Opposers are requesting to suspend based on Applicant's pending motion to compel and Opposers' failure to timely produce long sought discoverable materials. Subsequent to Applicant's filing of its motion seeking to compel, partial production of some discovery materials related to surveys and expert evidence was made by Opposers but only after filing of Applicant's motion. Thus, Opposers are attempting to benefit from long withholding discovery materials that had long been in Opposers' possession (over 2 years; see Ex.1, affidavit of Applicant's counsel) and forcing Applicant to compel production of said materials. Opposers' request is simply one of seeking a reward for their failure to timely produce discovery materials and asking the Board to reward Opposers for their dilatory conduct.

II. Opposers' Request Is A Further Delaying Tactic

Applicant has long sought the materials requested and the subject of Applicant's Motion To Compel (See attached, previously filed Applicant's Motion To Compel) seeking materials, among others, from the matter of Toyota Motor Sales, et al v. Aliments Lexus Foods, Inc., et al; Civil Index # CV020013(DGT, EDNY 2002). These materials and other records have existed for over two (2) yearsm(Ex.1) and have been sought by Applicant for the same period of time but were not produced until after Applicant's motion was filed and upon the eve of Opposers' Testimony period.

III. Opposers' Request Is Irrelevant To Testimony Period of Opposers

It is obvious that Opposers' request made well after commencement of their testimony period is yet another request to disrupt and delay these proceedings and is completely irrelevant to the submission of Opposers' testimony.

IV. Conclusion

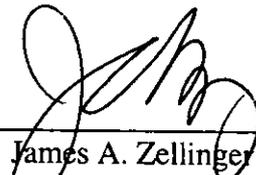
Opposers' request is yet another delaying tactic and further evidence of the

obstructionistic conduct typified by the failure to contact Applicant's counsel and delaying until the eve of the Testimony period to submit their request. Opposers are attempting to improperly benefit from their long failure to produce many different requested materials.

These factors coupled with the past delays and requests to protract these proceedings should result in a rejection of Opposers' request.

Respectfully submitted,

By: _____



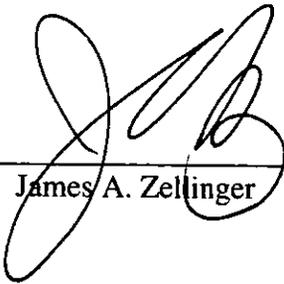
James A. Zellinger
Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, North Carolina 27409
(336) 632-7835
fax (336) 632-2012
ATTORNEY FOR APPLICANT

Date: August 22, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S OBJECTION TO
OPPOSERS' REQUEST TO SUSPEND PROCEEDINGS was served on counsel for Opposers
this the 22nd 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



James A. Zellinger

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SYNGENTA PARTICIPATIONS AG)	Mark: LEXXUS
)	
Applicant.)	

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. Opposer has not complied with 37 CFR 2.120(e) by failing to reasonably discuss Opposers' request with Applicant's counsel. Opposers' counsel failed to contact or attempt to contact Applicant's counsel to discuss Opposers' request. I did not receive any telephone messages or calls from Opposers' counsel.
2. During the last two (2) years, I have made over a dozen attempts through correspondence and discovery requests for survey and settlement information concerning this and other litigation involving Opposers and their mark. I received few responses to my requests.

3. I have also specifically requested information regarding the matter of Toyota Motor Sales, et al v. Aliments Lexus Foods, Inc., et al; Civil Index # CV020013(DGT, EDNY 2002), such as survey and expert evidence, some of which has existed for over a year but had not been produced prior to Applicant's motion to compel. Some of these materials have existed and been in the possession of Opposers for over two (2) years.

4. Only after filing of the motion herein to compel production did Applicant receive materials related to survey information but not settlement materials.

5. I received the attached letter from Opposers' counsel (Ex.2) indicating that a settlement had not yet been reached in the matter of Toyota Motor Sales, et al v. Aliments Lexus Foods, Inc., et al; Civil Index # CV020013(DGT, EDNY 2002).

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

22nd
SWORN to before me this day of Aug., 2006

Brenda Alley
Notary

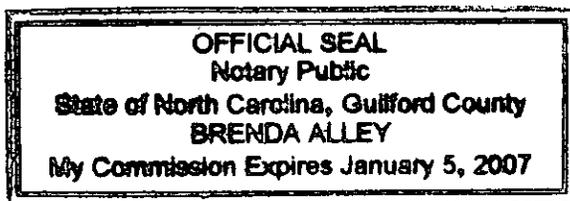
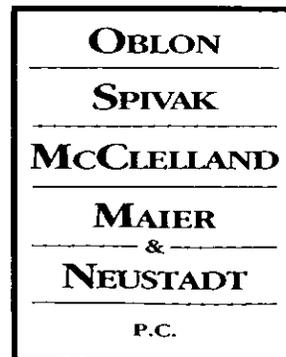


EXHIBIT 2



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

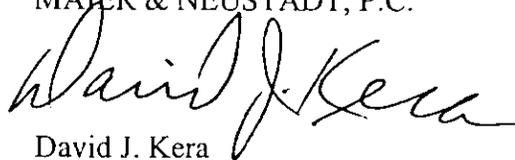
Re: *Toyota Jidoshu Kabushiki Kaisha, via Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. v. Syngenta Participations AG.*
Opposition No.: 91/157,206
Mark: LEXUS V. LEXUS
Our Ref: 238096US-213-21

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-lt4.doc}

