



TTAB

11-06-2003

U.S. Patent & Trademark Office/TM Mail Rcpt Dt. #73

Attorney Docket No.: 238096US-21

TTAB



**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. )

Opposition No. 157,206  
Serial No. 78/145,546

**OPPOSERS' OPPOSITION TO APPLICANT'S**  
**MOTION TO COMPEL**

Opposers Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. ("Opposers") oppose Applicant's Motion to Compel.

Applicant did not make a good faith effort by conference or correspondence (or any effort at all) to resolve the issues presented in Applicant's Motion to Compel prior to filing the Motion to Compel. Applicant of course, could not and did not include in its motion the required statement that a good faith effort had been made to resolve the discovery dispute. Therefore, Applicant did not comply with the requirement of 37 C.F.R. 2.120(e)(1) that a good faith effort be made to resolve the controversy before filing a motion to compel and did not comply with the requirement of 37 C.F.R. § 2.120(e)(1) that a written statement to that effect be filed in support of the motion to

compel. The written statement is a mandatory requirement. See cases cited in TBMP § 523.02, note 284.

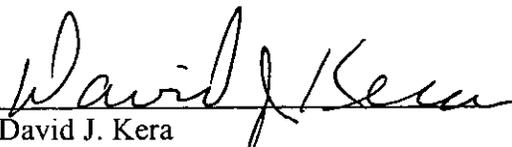
In addition, Applicant states in its Motion to Compel that Opposers have stated their intention not to respond to Applicant's discovery requests. This is directly contrary to fact. Opposers have never stated or implied their intention to refuse to reply to properly served discovery requests. Opposers invited Applicant to resend the discovery requests after Applicant prematurely served them on Opposers prior to the opening of Discovery. Unfortunately, Applicant re-served its discovery requests as an attachment to a letter and the discovery was mistakenly treated as correspondence and not docketed properly by Opposers counsel's personnel.

Therefore, for the aforementioned reasons, Opposer respectfully requests that the Board deny Applicant's Motion to Compel.

Respectfully submitted,

TOYOTA JIDOSHA KABUSHIKI  
KAISHA D/B/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

Attorney for Opposers

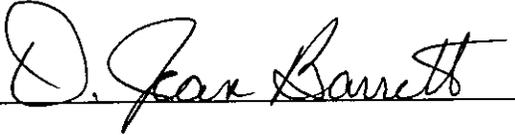
Date: November 6, 2003

DJK/KMD/mjo/ojb {E:\ATTY\DJK\213-238096US-MOT.DOC}

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSERS OPPOSITION TO APPLICANT'S MOTION TO COMPEL** was served on counsel for Applicant, this 6th day of November, 2003, by sending same via First Class mail, postage prepaid, to:

James A. Zellinger, Esquire  
SYNGENTA CROP PROTECTION INC.  
410 Swing Road  
Greensboro, North Carolina 27409

  
\_\_\_\_\_