



James A. Zellinger
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TTAB

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July 9, 2007

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

76/570,365

Re: *Syngenta Crop Protection, Inc. v. FARMSAVER.COM LLC*
Opposition No. 91175022

Dear Sirs:


Please find enclosed the Board's standard stipulated protective order signed by both parties.

I would respectfully ask that it be entered in this matter.

Very truly yours,


James A. Zellinger

JAZ/rt
Encl.


07-11-2007

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

In the Matter of Application Serial No. 76/570365 "ABBA", Filed January 12, 2004

SYNGENTA CROP PROTECTION, INC.)	
)	<u>Opposition No. 91175022</u>
)	
Opposer,)	<u>REQUEST FOR AN</u>
)	<u>EXTENSION OF</u>
v.)	<u>TIME/RESET OF</u>
)	<u>DISCOVERY PERIODS</u>
FARMSAVER.COM, L.L.C.)	
Applicant.)	

OPPOSER'S REQUEST FOR A BRIEF
EXTENSION OF TIME/RESET OF DISCOVERY PERIODS

Opposer would move this Board for a brief extension of time and to reset all discovery, briefing, and testimony periods. Opposer would submit that the parties had been pursuing settlement discussions, and for other significant reasons, Opposer requires additional time. As a result, the remaining time periods are insufficient for the parties to complete discovery and testimony. Opposer would request a ninety (90) day extension.

This request is made upon the declaration of Opposer's counsel and upon the following grounds, among others:

1. Witness unavailability.
2. Settlement discussions between the parties.
3. Change of Applicant's lead counsel.
4. Unavailability of Opposer's counsel.
5. Lack of prejudice.
6. Brief extension is requested.

I. Preliminary Statement

Opposer has attempted to obtain consent from Applicant's counsel through written and separately by telephone request. However, counsel refused to agree to a sixty (60) day extension. (However, Applicant's counsel did counter with a multi-conditional option that was overly restrictive).

II. Witness Unavailability

Despite Applicant's refusal to extend discovery and the claimed desire to depose Opposer's corporate designee, the relevant deponent designees for Opposer are unavailable throughout the remainder of the current discovery period when counsel is available. Opposer's sole outside (non-expert) witness (FMC Corporation) was currently discovered and Applicant was recently advised of this 'new' witness. This witness is unavailable until August (Ex.1, ¶ 4-6)

Opposer's expert, who is a university professor and whose university is currently on summer break, is also unavailable until early August, slightly beyond the discovery cut-off (Ex.1, ¶ 4-6).

III Settlement Discussions

Opposer submits the major factor causing both the delay and the request for extension was due to the settlement discussions between representatives of the parties. On or about April 29, counsel for Opposer and in-house trademark counsel for Applicant's parent company, Makhteshim Agan of No. America (hereinafter "Mana'), met and discussed resolution of this matter. A discussion was then later held by international telephone conference between counsel in the U.S.A., Switzerland, and Israel (Ex.1, ¶ 2&3; Ex.2&3). This counsel for Applicant's parent company suggested a resolution to Opposer which Opposer investigated and subsequently accepted. Although made in good faith by its parent company representative, Applicant refused to accept those settlement terms put forth by its own representative. This refusal was not communicated to Opposer until approximately June 20, 2007 at which time Opposer's counsel rekindled full discovery actions and contacted Applicant's counsel to schedule discovery depositions(Ex.1, ¶ 2&3; 2&3).

Applicant has produced numerous documents bearing the mark and indicating its relationship to Mana (see attached Exhibit 2&3; and also Ex.1, ¶ 2&3). There is no debate that this representative had apparent authority to discuss settlement. Opposer relied on that authority in delaying the pursuit of discovery until the settlement discussions were terminated by Applicant (Ex.1, ¶ 2&3; Ex.2&3).

Therefore, Opposer relied on its good faith efforts to resolve this matter through settlement. It delayed conducting discovery on the basis that Opposer had accepted the resolution offered by Applicant's representative which was subsequently rescinded (Ex.1, ¶ 2&3).

Opposer should not be penalized and Applicant rewarded by the good faith efforts of Opposer to resolve this matter through settlement discussions.

IV. Change of Applicant's Counsel

Lead counsel for Applicant in this matter was initially Carrie Johnson who has taken maternity leave. She was replaced by Ted Davis who is current counsel (Ex.1, ¶ 4). There were a number of conversations between her and Opposer's counsel that were not relayed to Applicant's current counsel. Furthermore, until recently, Opposer had directed e-mail to her and Davis which was not received initially by Davis and subsequently forwarded to him. These factors, while now corrected, have contributed to the delay and miscommunication that has occurred. These factors, not solely attributable to Opposer's counsel, have caused delay and a further basis for the need to extend the discovery period (Ex.1, ¶ 4; Ex.4).

V. Unavailability of Opposer's Counsel

Opposer's counsel who is unassisted by other counsel in this matter, is unavailable due to summer vacation plans, speaking engagements, discovery depositions scheduled (3), and other commitments made in advance of the termination of settlement discussions. He has little, if any, availability for the remainder of the discovery period. However, due to witness unavailability, this factor is a moot point but noteworthy to demonstrate the inability to conduct discovery prior to its current close date (Ex.1, ¶ 6)

V. Lack Of Prejudice To Applicant

A two (2) month delay cannot be prejudicial to Applicant. Furthermore, while not having served any notice of deposition upon Opposer to conduct an examination of Opposer until July 5, Applicant has demanded the production of witnesses prior to close of discovery with less than twenty five (25) days notice. These witnesses are not available and clearly an extension would be beneficial to Applicant, if it genuinely wishes to conduct the deposition of Opposer.

Furthermore, in anticipation of Applicant's response, Applicant's product is currently on the market and being actively sold (Ex.1, ¶ 9). An extension will not disrupt those sales or marketing of the product, and thus there is not any prejudice to Applicant.

VI. Conclusion

For the valid reasons above, particularly the delay caused by bona-fide settlement discussions, Opposer would move for an extension of ninety (90) days in the above proceeding as follows:

Discovery Period to Close:	October 28, 2007
Testimony period for Opposer to Close (Opening thirty (30) days prior thereto):	January 31, 2008
Testimony period for Applicant to Close (Opening (30) days prior thereto):	March 31, 2008
Rebuttal Testimony Period to Close (Opening fifteen (15) days prior thereto):	May 13, 2008

WHEREFORE, Opposer would move this Board for an order resetting all time periods, and extending the parties additional time to conduct discovery and to obtain testimony.

Opposer, Syngenta Crop Protection Corp.

By:



James A. Zellinger
Trademark Counsel
Syngenta Crop Protection, Corp.
410 Swing Rd.
Greensboro, N.C.

Dated:

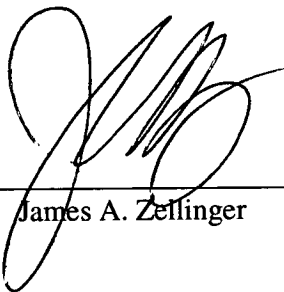
Aug 9, 2007

CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing Opposer's First Request for Extension of Time to Applicant's attorney of record as listed below by placing a copy of same in the U. S. Mail, properly addressed and postage prepaid, to:

Ted Davis
KILPATRICK STOCKTON LLP
Suite 2800
1100 Peachtree Street
Atlanta, Ga 30309-4530

on this the 9th day of July, 2007.



James A. Zellinger

EXHIBIT 1

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

In the Matter of Application Serial No. 76/570365 "ABBA", Filed January 12, 2004

SYNGENTA CROP PROTECTION,
INC.

Opposer,

v.

FARMSAVER.COM, L.L.C.
Applicant.

DECLARATION

DECLARATION

James A. Zellinger, being duly sworn, deposes and says:

1. I am counsel for Opposer, Syngenta CropProtection, Inc. I have spoken with counsel for Applicant who advised me that "he was not in a position to consent to Opposer's request for an extension".

2. I attended the INTA conference in Chicago in April/May of this year and met with Noam Mushkin, internal trademark counsel for Makhteshim – Agan Industries Ltd. (hereinafter "Mana"), the parent company of Applicant, on or about April 30. At that time and subsequently, we discussed possible terms to resolve this opposition. Mushkin was extremely pleasant and helpful. We then conducted a telephone conference on June 5th to further discuss settlement. Included in this international telephone discussion was counsel for Opposer's affiliate in Switzerland, Mike Dammann (Ex. 2). A resolution was proposed by Mushkin which was subsequently found acceptable to Opposer.

3. On June 20th, I was advised that a resolution could not be reached. I was further advised that "Thus, this case is back in the hands of MANA and their lawyers at K&S [Applicant's counsel]" (emphasis added; See Ex. 3).

4. After receipt of this news, I immediately commenced 'catch up' and sought to schedule discovery depositions. I directed e-mail to Applicant's counsel who was on maternity leave. I also misdirected e-mail (to the wrong address) to Applicant's co-counsel, Ted Davis.

5. I have made commitments in other Board proceedings (In the Matter of Application Serial No.78/660644 "AGMETER", Filed June 29, 2005; Opposition # 91175091) in July to depose Applicant. Also to take testimony (in the matter of In the Matter of Application Serial No. 78307830, "LIFEZONE", Opposition No. 91160999) on July 16 -17.

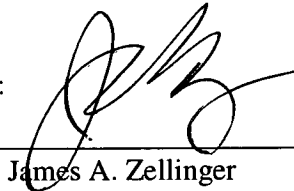
6. I have made vacation plans for both July and August prior to the June 20th notice that settlement could not be reached.

7. I did not contact any witnesses for Opposer until June 22 shortly after receipt of the notice of settlement failure and they were unavailable for most of July and the remainder of the discovery period.

8. I also previously encountered delays with Applicant's counsel in preparation of the protective order eventually entered by the Board in this matter ("I note, that despite the delay caused by the confidentiality agreement preparation....." Ex. 4, letter of April 4, 2007, from undersigned).

9. Applicant is currently selling its "Abba" product in the agricultural marketplace and has offered its sale by flyer, advertisements, and on its web site.

By:



James A. Zellinger
Trademark Counsel
Syngenta Crop Protection, Corp.
410 Swing Rd.
Greensboro, N.C.

Sworn to this day 9 of July, 2007.

Brenda Alley, Notary Public

Dated: July 9, 2007



EXHIBIT 2

Zellinger Jim USGR

From: Noam Mushkin [noamm@mcw.co.il]
Sent: Wednesday, June 20, 2007 7:38 AM
To: Zellinger Jim USGR
Cc: Dammann Mike CHBS; CarJohnson@kilpatrickstockton.com; Allan Las; Victor Smith
Subject: RE: Abba opposition

Dear Jim:

I have spoken to the development team in charge of this product and have discussed with them the proposal for co-existence. After careful consideration, Makhteshim-Agan of North America (MANA) has decided to pursue registration of their trademark ABBA. Thus, this case is back in the hands of MANA and their lawyers at K&S.

Best regards,

Noam

Noam MUSHKIN, Ph.D.
Patent Attorney
Corporate Intellectual Property Counsel
Makhteshim – Agan Industries Ltd.
Tel +972-8-629-6728
Fax +972-3-548-0203
Mobile +972-527-310-008
E-Mail: noamm@mcw.co.il
Website: www.main.co.il

From: jim.zellinger@syngenta.com [mailto:jim.zellinger@syngenta.com]
Sent: Tuesday, June 19, 2007 13:43
To: CarJohnson@kilpatrickstockton.com
Cc: mike.dammann@syngenta.com; Noam Mushkin; tom.hamilton@syngenta.com
Subject: Abba opposition

Greetings

I understand that there may a resolution to these proceedings. May we agree to suspend proceedings for 90 days with the agreement to jointly request reset if we cannot reach a resolution within that time period ?? Please advise.
Regards, jaz

James A. Zellinger
Trademark Counsel
Syngenta Group Companies

EXHIBIT 3

Zellinger Jim USGR

From: Noam Mushkin [noamm@mcw.co.il]
Sent: Tuesday, June 05, 2007 10:57 AM
To: Zellinger Jim USGR
Cc: Dammann Mike CHBS
Subject: RE: TM Opposition filed by Syngenta U.S. against Makhteshim-Agan TM "ABBA"

I'll try to initiate. In a minute gentlemen....

From: jim.zellinger@syngenta.com [mailto:jim.zellinger@syngenta.com]
Sent: Tuesday, June 05, 2007 15:50
To: Noam Mushkin
Cc: mike.dammann@syngenta.com
Subject: RE: TM Opposition filed by Syngenta U.S. against Makhteshim-Agan TM "ABBA"

who will initiate the call??
my number (USA) is (44?) 1-336-632-7835. jaz

From: Noam Mushkin [mailto:noamm@mcw.co.il]
Sent: Tuesday, May 29, 2007 10:32 AM
To: Dammann Mike CHBS; Zellinger Jim USGR
Subject: RE: TM Opposition filed by Syngenta U.S. against Makhteshim-Agan TM "ABBA"

Dear Gentlemen:

I had the opportunity to speak with our commercial people in the U.S. last week, and get their perspective on the matter.

Since this matter may be relevant outside the U.S. as well, I would like Mike to also participate. In view of Mike's travels, can we schedule a telecom for Tuesday, June 5th, 10 am EST (4 pm in Basel)?

Best regards,

Noam

Noam MUSHKIN, Ph.D.

Patent Attorney

Corporate Intellectual Property Counsel

Makhteshim – Agan Industries Ltd.

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Website: www.main.co.il

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From: mike.dammann@syngenta.com [mailto:mike.dammann@syngenta.com]
Sent: Tuesday, May 29, 2007 15:24
To: Noam Mushkin
Cc: jim.zellinger@syngenta.com
Subject: RE: TM Opposition filed by Syngenta U.S. against Makhteshim-Agan TM "ABBA"

Dear Noam,

Thank you for your e-mail below.

Also for me it was a great pleasure to meet you, Anna, as well as other trademark colleagues at the INTA in Chicago. Also, Jane is well again.

With respect to the trademark opposition against "ABBA" in the US, this is handled by our US colleague, Jim Zellinger. Since I am traveling the whole week, I would like to offer you to talk to Jim directly (Tel. +1 336 632 7835). If the matter is not too urgent, we could also have a telecon next week, between you, Jim and myself, okay?

Kind regards,
Mike

Mike Dammann
Global Head of Trademarks Syngenta
Tel: +41-61-323 9245 Fax: +41-61-323 9266 E-Mail: mike.dammann@syngenta.com

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

April 4, 2007

Carrie A. Johnson
Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, Ga 30309-4530

Subject: "Abba" Opposition; Opposer's Responses

Dear Carrie:

Please find enclosed Opposer's responses to Applicant's discovery request. I also enclose a copy of the fully executed protective order and confidential agreement. There certainly will be additional documents to follow from both internal and third party sources. Please note the first use of 'aba' in a company document dated Dec. 7, 2001 but we believe earlier uses and also uses by and to third parties dated 2002 exist as well other than those contained in Opposer's responses. I will be providing those once located.

I note, that despite the delay caused by the confidentiality agreement preparation, you have granted Opposer an additional 10 days to respond to Applicant's discovery requests. Please feel free to take an additional 20 days in providing your responses since I do not share any urgency in light of the production to follow.

I am in a position to commence discussions of deposition scheduling but would prefer to allow some additional time for document locating and production.

Thank you for your assistance with this matter.

Very Truly Yours,

James A. Zellinger
Trademark Counsel

JAZ/bw

James A. Zellinger
Trademark Counsel

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