

From: [Bucca, Daniel](#)
To: [Trials](#)
Cc: [Feldstein, Mark](#); raj.gupta@finnegan.com; [Giannelli, Maximilienne](#); [Esper, William](#); [Herbert, Toni-Junell](#); [Klecynsier, David M.](#); [Carson, Charles C.](#); [Rick, Michelle](#); [Guerra, Kenneth](#)
Subject: RE: PGR2023-00017 – Motion for Additional Discovery
Date: Monday, October 16, 2023 12:38:47 PM
Attachments: [image002.png](#)
[RE PGR2023-00017.msg](#)

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To the Honorable Board,

In anticipation of the conference call today in PGR2023-00017, Petitioner provides the attached email exchange between the parties and the below summary.

Following the deposition of Petitioner's fact witness, Dr. Prates, Patent Owner requested the following on Sept 25th:

- “• The ‘field books’ containing all the data and assessments that Syngenta performed in relation to the trials addressed in Dr. Prates declaration;
- The report Syngenta submitted to the Brazilian government that is associated with those field books and/or trials;
- Materials related to the benefits of using mancozeb in combination with benzovindiflupyr and prothioconazole;
- Syngenta's bases for promoting combinations with mancozeb and the other claimed fungicides (including in combination with Mitrion in Brazil); and
- Information related to Syngenta's development or promotion of a ready-mix or tank-mix combination product containing benzovindiflupyr, prothioconazole, and mancozeb.”

Petitioner responded that such production was inappropriate. However, Petitioner was willing to voluntarily provide copies of the “field books” as understood by Petitioner's Counsel at the time (the raw data for disease control disclosed in Dr. Prates' declaration). One day before the deposition of Petitioner's expert, Dr. Brannen, Patent Owner then indicated it would be necessary to reschedule this deposition until the materials Patent Owner requested were produced. In response, Petitioner explained that Patent Owner's request for production was inappropriate and untimely (requests for material underlying the Dr. Prates declaration should have been made with initial disclosure requests). Petitioner further stated it expected the deposition of Dr. Brannen to proceed as noticed.

After reaching agreement regarding a protective order, Petitioner's Counsel indicated that it had learned that the “field books” are not in physical form per se, but are rather an electronic database including information not relevant to the Prates Declaration. Petitioner maintained its intention to voluntarily provide the underlying data in the tables of the Prates declaration upon entry of the modified protective order.

Patent Owner responded that “Given Petitioner's delay and its prior refusal to produce other

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Ex. 3002

documents identified by Mr.[sic] Prates, Patent Owner intends to request leave form[sic] the Board to file a motion for additional discovery under 37 C.F.R. § 42.51(b)(2).”

Petitioner agreed to meet and confer with the Honorable Board.

The full exchange between the parties is provided in the attached email chain.

Respectfully submitted,

Daniel Bucca

Counsel for Petitioner, Syngenta Crop Protection AG

Daniel Bucca, Ph.D.
BakerHostetler
T +1.202.861.1575
M +1.703.402.9442

From: Trials <Trials@USPTO.GOV>
Sent: Friday, October 13, 2023 3:15 PM
To: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Trials <Trials@USPTO.GOV>
Cc: Feldstein, Mark <mark.feldstein@finnegan.com>; raj.gupta@finnegan.com; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Esper, William <William.Esper@finnegan.com>; Herbert, Toni-Junell <therbert@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>
Subject: RE: PGR2023-00017 – Motion for Additional Discovery

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Counsel,

A conference call is scheduled for **3 pm ET on October 16, 2023.**

The dial-in number is: 877-934-8037 and the passcode is: 9450035#.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>
Sent: Friday, October 13, 2023 12:19 PM
To: Trials <Trials@USPTO.GOV>
Cc: Feldstein, Mark <mark.feldstein@finnegan.com>; raj.gupta@finnegan.com; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Esper, William <William.Esper@finnegan.com>; Herbert, Toni-Junell <therbert@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>
Subject: PGR2023-00017 – Motion for Additional Discovery

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Dear Honorable Board,

Patent Owner hereby requests leave to file a Motion for Additional Discovery Under 37 C.F.R. § 42.51(b)(2) ("Motion"). The Motion will relate to documents identified in the deposition of Petitioner's declarant Dr. Caio Prates that would contradict Petitioner's assertion that the claimed combinations are obvious, did not exhibit any unexpected benefits such as synergy, and are not enabled. The Parties have discussed but have been unable to reach agreement.

The parties can be available at the Board's convenience for a conference on Monday, October 16, 2023, from 3:00-6:00pm ET. Patent Owner is additionally available Wednesday, October 18, 2023, from 3:00-6:00pm ET.

Best,
Ken

Kenneth S. Guerra
Associate

Pronouns: He, Him, His

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
901 New York Avenue, NW, Washington, DC 20001-4413

+1 202 408 4124 | mobile +1 219 576 4160 | Kenneth.Guerra@finnegan.com | www.finnegan.com

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