

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

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SYNGENTA CROP PROTECTION AG,  
Petitioner,  
vs.  
UPL LTD.,  
Patent Owner.

~~~~~

PGR2023-00017
U.S. Patent No. 11,445,727 B2

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Remote Teleconference Hearing Before  
SUSAN L. C. MITCHELL, ZHENYU YANG,  
and MICHAEL A. VALEK  
Administrative Patent Judges

October 16, 2023  
3:00 p.m. EST

Denise M. Munguia, RDR, CRR, CRC, CLR  
California CSR #14033  
Michigan CSR #15974

Henderson Legal Services

202-220-4158

[www.hendersonlegalservices.com](http://www.hendersonlegalservices.com)

## 1 TELEPHONIC APPEARANCES:

2 On behalf of the Petitioner:

3 BakerHostetler, by  
4 Daniel Bucca, Ph.D., Esq.  
5 David M. Klecyngier, Esq.  
6 Washington Square, Suite 1100  
7 1050 Connecticut Avenue, N.W.  
8 Washington, D.C. 20036-5403  
9 202.861.1500  
10 dbucca@bakerlaw.com  
11 dklecyngier@bakerlaw.com

12 On behalf of the Patent Owner:

13 Finnegan, Henderson, Farabow,  
14 Garrett & Dunner, L.L.P., by  
15 Mark J. Feldstein, Esq.  
16 Kenneth S. Guerra, Esq.  
17 901 New York Avenue, N.W.  
18 Washington, D.C. 20001-4413  
19 202.408.4000  
20 mark.feldstein@finnegan.com  
21 kenneth.guerra@finnegan.com

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25

1 JUDGE YANG: This is a conference call 15:00:27  
2 for 2023-00017. I'm Judge Yang. On the line are 15:00:29  
3 Judges Mitchell and Valek. 15:00:34  
4 I'd like to start with a roll call to 15:00:37  
5 make sure everybody is online. Let's start with 15:00:41  
6 Petitioner, please. 15:00:45  
7 MR. BUCCA: Hi, this is Dan Bucca. I 15:00:51  
8 believe also is on the line David Klecyngier. 15:00:53  
9 We're with the law firm of BakerHostetler and we 15:00:58  
10 represent the Petitioner, Syngenta Crop 15:01:02  
11 Protection. 15:01:06  
12 JUDGE YANG: All right. Thank you. 15:01:08  
13 Patent Owner, please. 15:01:10  
14 MR. FELDSTEIN: Your Honor, this is Mark 15:01:10  
15 Feldstein from Finnegan Henderson on behalf of 15:01:12  
16 the Patent Owner. With me today is also Ken 15:01:15  
17 Guerra from Finnegan, and we also have a court 15:01:18  
18 reporter on the line. 15:01:20  
19 JUDGE YANG: Very good. So can we then 15:01:23  
20 ask you to file the transcript of the call when 15:01:26  
21 it is ready? 15:01:30  
22 MR. FELDSTEIN: Yes, Your Honor. 15:01:31  
23 JUDGE YANG: Thank you. 15:01:34  
24 All right. So we are here because 15:01:36  
25 Patent Owner requests this conference. We 15:01:38

1 understand there may be some dispute over 15:01:42  
2 discovery, and specifically a possible motion for 15:01:46  
3 additional discovery. So, Patent Owner, why 15:01:50  
4 don't you start and tell us -- 15:01:53

5 MR. FELDSTEIN: Yes, Your Honor. 15:01:59

6 JUDGE YANG: -- what it is you are 15:01:59  
7 asking. 15:01:59

8 MR. FELDSTEIN: Yes, Your Honor. This 15:02:01  
9 is Mark Feldstein on behalf of Patent Owner. 15:02:03

10 So at a high level, just as context, 15:02:05  
11 among Petitioner's arguments is they have argued 15:02:08  
12 that our claims are obvious, they have argued 15:02:11  
13 that data in the patent, the results were not 15:02:14  
14 synergistic, and they're not surprising. They 15:02:19  
15 have argued that the claim's not enabled for 15:02:22  
16 enhanced efficacy, and then they submitted some 15:02:26  
17 data purporting to show a lack of synergy. 15:02:29

18 We took the deposition of their fact 15:02:33  
19 witness who presented that data, Mr. Prates, and 15:02:35  
20 we learned about two categories of documents from 15:02:38  
21 that deposition of Mr. Prates. We learned -- I'm 15:02:41  
22 sorry. There's a lot of background noise. 15:02:47

23 JUDGE YANG: Let me remind the people 15:02:56  
24 who are not speaking to please mute your phones. 15:02:57

25 Continue, please. 15:03:04

1 MR. FELDSTEIN: Thank you, Your Honor. 15:03:05

2 So we learned from the deposition of 15:03:06

3 Mr. Prates that Syngenta had two categories of 15:03:08

4 information in their possession. They had 15:03:12

5 information that you may have seen referred to in 15:03:15

6 the correspondence that Syngenta submitted called 15:03:17

7 field books that is additional data on the 15:03:20

8 testing that they have included in their report, 15:03:24

9 but that includes data, more detailed data that 15:03:27

10 would enable statistical analysis, whereas they 15:03:32

11 only put in single values, average values with 15:03:35

12 no -- nothing to show whether or not there's any 15:03:39

13 statistical significance to what they reported, 15:03:42

14 and then, perhaps even more importantly, they 15:03:44

15 have data, according to Mr. Prates, in this field 15:03:47

16 book showing improvements in at least defoliation 15:03:50

17 and disease resistance management. And so those 15:03:55

18 are contrary to the positions they have taken on 15:03:59

19 obviousness and enablement. That's the first 15:04:01

20 category, these field books that are more 15:04:04

21 comprehensive data underlying what they submitted 15:04:08

22 in Exhibit 1020 in summary data. 15:04:10

23 We learned also of a second category of 15:04:13

24 documents. The claims include certain 15:04:17

25 formulations, including a three-part formulation 15:04:20

6

1 that covers three fungicides, benzovindiflupyr, 15:04:24  
2 propiconazole, and mancozeb, and what we have 15:04:30  
3 learned during the deposition of Mr. Prates is 15:04:32  
4 that Syngenta had been developing and promoting 15:04:34  
5 the claimed formula, they have information 15:04:39  
6 showing that the combination, the three-way 15:04:42  
7 combination adds value with respect to disease 15:04:46  
8 management, and they would have documents 15:04:48  
9 reflecting bases for developing and promoting 15:04:53  
10 that three-part combination. 15:04:55

11 So this -- so we're seeking additional 15:04:57  
12 discovery to go after those two categories of 15:05:00  
13 documents. It's a little bit distinct in this 15:05:03  
14 case from many cases on additional discovery 15:05:07  
15 where, for example, there has been discovery in 15:05:10  
16 District Court, parallel District Court 15:05:14  
17 litigation and the documents are already in hand 15:05:17  
18 and it's just a matter of getting them from the 15:05:19  
19 District Court into the PTAB proceeding, and 15:05:21  
20 then, on the other hand, cases involving just 15:05:25  
21 pure fishing expeditions. There's one case 15:05:27  
22 that's perhaps relevant is Brunswick Corp. versus 15:05:30  
23 Volvo, which is IPR2020-01512, where additional 15:05:34  
24 discovery was granted for information related to 15:05:40  
25 commercial and success and copying where the 15:05:44

1     Petitioner had put in one of its statements to     15:05:48  
2     the SEC, they had put on the record that they     15:05:51  
3     were already marketing or have launched the     15:05:53  
4     product that was copied in the claimed invention,     15:05:56  
5     and so the discovery was allowed there because it     15:06:00  
6     wasn't speculative they had documents, it was     15:06:02  
7     determined from information produced by the     15:06:06  
8     Petitioner that the information existed, and     15:06:08  
9     interestingly, that case was just vacated and     15:06:12  
10    remanded in August by the Federal Circuit to     15:06:15  
11    reconsider the objective indicia. So we think     15:06:17  
12    we're similar to that. We know that these     15:06:21  
13    documents exist because Mr. Prates testified that     15:06:23  
14    they exist, and that's the discovery we are going     15:06:26  
15    after.     15:06:30

16           There's a tangential issue with respect     15:06:31  
17    to the field books. We thought we had reached     15:06:33  
18    agreement, and I think we still have reached     15:06:35  
19    agreement, I don't think that Syngenta had backed     15:06:39  
20    out of its agreement to produce the field books,     15:06:41  
21    but there's been a problem of delay, it's been     15:06:44  
22    multiple weeks now, and our Patent Owner response     15:06:46  
23    is due in two weeks. It sounds like the data may     15:06:50  
24    actually be extensive from the database, not     15:06:53  
25    even, you know, a hard copy field book, as the     15:06:57

1 name suggests, and so we had hoped to be able to 15:07:00  
2 resolve that one piece of this puzzle before 15:07:03  
3 contacting the Board, but that's still 15:07:07  
4 outstanding and it is problematic that we have 15:07:09  
5 limited time left. 15:07:11

6           There are -- I think one thing you will 15:07:14  
7 hear from Petitioner is that somehow Patent Owner 15:07:18  
8 is at fault for not seeking this information 15:07:22  
9 sooner. It is reflected in some of the 15:07:25  
10 correspondence they attached in their e-mail 15:07:29  
11 earlier today that they think that we should have 15:07:30  
12 asked for these documents that we didn't know 15:07:32  
13 existed and couldn't have known existed, we 15:07:35  
14 should ask for them even before deposing 15:07:37  
15 Mr. Prates. I don't think there's any merit to 15:07:39  
16 having required us to ask for things we don't 15:07:43  
17 know about. I think is really tangent to whether 15:07:46  
18 or not it's relevant for additional discovery 15:07:49  
19 now. 15:07:52

20           And so at bottom, as reflected in 15:07:52  
21 correspondence that, again, Syngenta sent in to 15:07:58  
22 you today, we have done our best to narrow down 15:08:01  
23 our request. We had started in earlier 15:08:03  
24 communications with a little bit broader topics 15:08:06  
25 and now we have narrowed it down to, again, two 15:08:08

1 categories of information, these field books of 15:08:12  
2 data that Syngenta had previously agreed to 15:08:15  
3 produce, and then we're seeking leave for the 15:08:17  
4 motion for additional discovery for documents 15:08:20  
5 sufficient to show the benefits they have 15:08:23  
6 identified already of the benzo -- this 15:08:26  
7 benzovindiflupyr, propiconazole, and mancozeb 15:08:28  
8 combination, their promotion of that either as a 15:08:34  
9 mixture with another product or as a standalone 15:08:37  
10 product. And the bases for their promotion that 15:08:42  
11 Mr. Prates testified they would have. 15:08:45

12 JUDGE YANG: All right. Thank you. 15:08:52  
13 Let's move on. Petitioner, what is your 15:08:56  
14 response? 15:08:58

15 MR. BUCCA: Yes, thank you, Your Honor. 15:08:59  
16 Some of what I heard is new to us today. Let me 15:09:01  
17 just start with the field books. As you saw 15:09:06  
18 perhaps in the correspondence, Petitioner did 15:09:10  
19 voluntarily agree to provide field books. At the 15:09:14  
20 time we understood them to be actual books, but 15:09:19  
21 we learned later that it's an entire database and 15:09:21  
22 there's a lot of information in that database 15:09:25  
23 that has nothing to do with the testing that was 15:09:27  
24 done by Mr. Prates -- Dr. Prates, rather. And so 15:09:31  
25 we told Patent Owner that we were willing to 15:09:35

10

1 produce, voluntarily, the underlying data that 15:09:39  
2 went into the Prates declaration, and we 15:09:42  
3 continued to indicate to them that we would 15:09:46  
4 produce that. We had one condition, and that was 15:09:49  
5 entry of a protective order. We sent to the 15:09:52  
6 Patent Owner a draft, they made some changes, and 15:09:56  
7 last week we submitted the modified protective 15:10:00  
8 order, first as an e-mail, then as a motion. 15:10:04  
9 So -- and we're still willing to produce that, 15:10:08  
10 the underlying data that is reflected in the 15:10:11  
11 Prates declaration with respect to disease 15:10:15  
12 control. 15:10:18

13 With regard to the other categories, we 15:10:19  
14 take issue with both the characterization of the 15:10:22  
15 deposition and whether the Patent Owner is 15:10:27  
16 entitled to it. And I'll go through what I just 15:10:30  
17 heard, and that is that they believe there is 15:10:33  
18 some document that the corporation, Syngenta, has 15:10:36  
19 that relates to benefits and promotion of certain 15:10:43  
20 fungicides. That may be true. Syngenta is a 15:10:48  
21 very large organization. It's a billion 15:10:52  
22 dollar -- \$16 billion company. It has over 15:10:55  
23 50,000 employees. 15:10:59

24 When Mr. Prates was deposed, he was 15:11:00  
25 deposed as a fact witness on his declaration. 15:11:02

11

1 His declaration only described certain limited 15:11:06  
2 testing, and the questions that were being asked 15:11:10  
3 of Mr. Prates was his guess as to what he thought 15:11:12  
4 was going on, but he was not offered as a 15:11:16  
5 spokesperson for Syngenta. We don't know if what 15:11:20  
6 he said was necessarily correct. He didn't -- 15:11:23  
7 he, in fact, testified several times that he 15:11:27  
8 didn't know if there were documents to the extent 15:11:29  
9 that there were benefits that Syngenta was 15:11:32  
10 promoting. 15:11:34

11 And another point I would like to raise 15:11:36  
12 is, even if that is true, even if Syngenta does 15:11:38  
13 have documentation that promotes the use in this 15:11:41  
14 case of mancozeb, which is one of the fungicides, 15:11:46  
15 that's not inconsistent with any position that 15:11:49  
16 Patent Owner -- I'm sorry, that Petitioner has 15:11:52  
17 taken. In fact, our petition has shown that the 15:11:54  
18 prior art -- you know, these are well-known 15:11:59  
19 fungicides, and the prior art has taught their 15:12:04  
20 use and what to expect from them. 15:12:06

21 So I guess, with that, I would say that 15:12:12  
22 it is nothing more than a fishing expedition. 15:12:15  
23 This is nothing more than speculation on the part 15:12:19  
24 of Patent Owner. There is no evidence of 15:12:21  
25 documents. They can't point to any testimony 15:12:24

12

1 that Dr. Prates said there was a document. And, 15:12:28  
2 you know, in sum, we will -- we are willing to 15:12:32  
3 produce the data that went into the disease 15:12:37  
4 control that's reflected in Dr. Prates' 15:12:43  
5 declaration. We have always, we have always said 15:12:48  
6 we would be willing to do it. We had one 15:12:50  
7 condition, and that was the entry of the 15:12:52  
8 protective order, which we submitted to the 15:12:53  
9 Court. To the Board, I'm sorry. 15:12:55

10 JUDGE YANG: Okay. So on the protective 15:13:02  
11 order part, here we'll just give a verbal 15:13:04  
12 assurance that we will, we will enter an 15:13:11  
13 appropriate protective order. At this time our 15:13:21  
14 understanding is Patent Owner has agreed to treat 15:13:27  
15 it as confidential information, so if that's the 15:13:30  
16 case, Petitioner, would you be willing to just 15:13:39  
17 produce it at this time, especially given the 15:13:41  
18 deadline coming up to submit the Patent Owner's 15:13:47  
19 response? 15:13:52

20 MR. BUCCA: Yes. We are still reviewing 15:13:54  
21 the data. We should have that completed this 15:13:57  
22 week, and as soon as we do, we will produce the 15:13:59  
23 underlying data that went into the tables in the 15:14:01  
24 Prates declaration. 15:14:06

25 JUDGE YANG: Okay. So today is Monday. 15:14:07

13

1 This week? Which day would you, would you say 15:14:09

2 you will be able to get that done? 15:14:12

3 MR. BUCCA: Wednesday, close of business 15:14:20

4 Wednesday. 15:14:20

5 JUDGE YANG: Okay. Let me get Patent 15:14:23

6 Owner. Would that work for you, Patent Owner, on 15:14:25

7 the field books? 15:14:28

8 MR. FELDSTEIN: Yes. Thank you. For 15:14:28

9 the field books, I mean if they haven't finished 15:14:29

10 reviewing the data, I don't think that we can 15:14:31

11 realistically ask for sooner. As I mentioned 15:14:34

12 from the beginning, the time is getting short 15:14:37

13 already because, you know, they are giving the 15:14:39

14 impression it's quite a large volume of data and 15:14:41

15 then we will have about a week and a half to 15:14:43

16 consider it, so I don't think it's realistic to 15:14:46

17 ask them at this point for anything sooner, but 15:14:47

18 it may be a challenge for us to then analyze and 15:14:50

19 incorporate it. 15:14:53

20 JUDGE YANG: Okay. 15:14:55

21 MR. BUCCA: Your Honor, may I make a 15:14:56

22 point about timing? 15:14:58

23 JUDGE YANG: Please. 15:14:59

24 MR. BUCCA: Yes. So Patent Owner keeps 15:15:00

25 saying that they don't have enough time, but we 15:15:04

14

1 produced the Prates declaration along with the 15:15:06  
2 petition, and in the Prates declaration, he 15:15:09  
3 described the testing. It wouldn't have taken 15:15:14  
4 too much imagination to know that there was some 15:15:16  
5 underlying data. If they wanted the underlying 15:15:18  
6 data, they could have asked for it before the 15:15:20  
7 deposition of the declarant. And so there is -- 15:15:23  
8 you know, whatever delay there is, it's not been 15:15:29  
9 on the Petitioner. 15:15:31

10 JUDGE YANG: All right. We hear you. 15:15:36  
11 Here is the suggestion: Once the data is 15:15:37  
12 produced, are produced, the parties, and, Patent 15:15:41  
13 Owner, if with your best efforts you couldn't, 15:15:47  
14 couldn't get your -- get the analysis done to 15:15:54  
15 support the response, we suggest at that time the 15:16:00  
16 parties should meet and confer. In our 15:16:05  
17 scheduling order, we always encourage parties, if 15:16:12  
18 needed, to stipulate any change to the, to the 15:16:15  
19 due date. If at that time you guys can talk 15:16:19  
20 about it, that'll be great. I'm hoping that you 15:16:22  
21 can reach some kind of agreement so that the 15:16:28  
22 review of the data, both on Petitioner's side 15:16:32  
23 before production, and on Patent Owner's side 15:16:36  
24 after the production, can go smoothly. 15:16:41

25 So with that, we'll just put the field 15:16:43

15

1 books issue aside. 15:16:45

2 On the second category, Patent Owner, 15:16:48

3 could you explain a little more of the relevance 15:16:53

4 of what you are asking for? If Syngenta is 15:16:55

5 promoting some product, are you saying that works 15:17:01

6 to your, to the -- to support secondary 15:17:09

7 consideration, or what exactly are we looking at 15:17:12

8 here? 15:17:15

9 MR. FELDSTEIN: Yeah, it contradicts -- 15:17:17

10 thank you, Your Honor. This is Mark Feldstein 15:17:19

11 again. It contradicts their position that the 15:17:22

12 claims are not enabled and couldn't practice it 15:17:26

13 and getting enhanced efficacy because, from what 15:17:27

14 we understood from Mr. Prates, they are promoting 15:17:30

15 it, in part, because of enhanced efficacy. And 15:17:32

16 then, in addition to contradicting their 15:17:35

17 enablement position and the obviousness position, 15:17:37

18 it goes exactly as Your Honor is suggesting, much 15:17:40

19 like the -- to secondary considerations where 15:17:44

20 they have copied and are promoting a copy of the 15:17:48

21 claimed invention, and that the way Mr. Prates 15:17:53

22 described it, they have bases for promoting it in 15:17:56

23 terms of its advantages, in terms of disease 15:18:00

24 control and defoliation. So there's going to be 15:18:04

25 additional bases, which is additional objective 15:18:09

16

1       indicia of unexpected results that are in there.       15:18:12

2       In their data.       15:18:16

3               So basically they have copied it, they       15:18:19

4       are promoting it, they have reasons, scientific       15:18:21

5       reasons or fact-based reasons for promoting it.       15:18:24

6       Those reasons include at least benefits in terms       15:18:27

7       of defoliation and disease resistance management,       15:18:30

8       and those all together support objective indicia       15:18:34

9       of copying as well as unexpected results.       15:18:38

10              MR. BUCCA: If I may, Your Honor.       15:18:45

11              JUDGE YANG: Yes, please.       15:18:50

12              MR. BUCCA: I'm sorry. I wasn't sure if       15:18:52

13       Patent Owner was done.       15:18:55

14              So this is Petitioner response. Again,       15:18:58

15       this is, this is a fishing expedition. They       15:19:02

16       haven't met good cause standard under the       15:19:05

17       Bloomberg factors. They haven't provided       15:19:09

18       anything that is supporting of evidence, it's       15:19:11

19       just a mere allegation that there might be some       15:19:16

20       promotional material out there based on a fact       15:19:18

21       witness, and he didn't say that there were, in       15:19:20

22       fact, these sort of documents. Again, for us       15:19:24

23       to -- it would be incredibly burdensome, as I       15:19:31

24       just mentioned. Syngenta is a, you know, 16       15:19:34

25       million -- \$16 billion organization.       15:19:37

17

1 Realistically, for us to find this kind of 15:19:39  
2 information, we would have to identify several 15:19:41  
3 individuals and then do a due diligence as to 15:19:46  
4 what it is that may be in Syngenta's files, since 15:19:49  
5 we don't know what they are, they are not being 15:19:53  
6 very specific, they are just giving us a 15:19:55  
7 category. 15:19:59

8 There's also -- 15:20:02

9 JUDGE YANG: All right. 15:20:04

10 MR. BUCCA: Yeah, so I don't think they 15:20:05  
11 have even come close to meeting any of the, any 15:20:08  
12 of the Bloomberg factors. It's not clear what it 15:20:10  
13 is they are really after when they -- you know, 15:20:12  
14 it's just this vague term, they want some 15:20:14  
15 secondary consideration evidence. And, again, we 15:20:17  
16 have already, in our petition, provided evidence 15:20:23  
17 as to the reasons why people would use mancozeb. 15:20:26  
18 It's, in fact, one of the patents that was the 15:20:32  
19 basis for instituting this PGR was a Syngenta 15:20:35  
20 patent which describes using benzovindiflupyr and 15:20:40  
21 mancozeb, and the Board has, in fact, said that 15:20:45  
22 the claims are anticipated based on a Syngenta 15:20:50  
23 patent that describes these very fungicides. 15:20:54  
24 MR. FELDSTEIN: Your Honor, may I please 15:20:54  
25 respond -- 15:20:54

18

1 MR. BUCCA: So it is not inventive -- 15:21:01

2 MR. FELDSTEIN: I'm sorry. 15:21:01

3 MR. BUCCA: Yeah, one last point. 15:21:03

4 It's not inventive to use prior art 15:21:05

5 fungicides for their known purpose. 15:21:09

6 That was my last point. 15:21:13

7 JUDGE YANG: Okay. Patent Owner -- 15:21:15

8 MR. FELDSTEIN: Just very briefly, Your 15:21:17

9 Honor -- 15:21:18

10 JUDGE YANG: Patent Owner, do you want 15:21:18

11 to say something? Yes, very brief. 15:21:19

12 MR. FELDSTEIN: Yes, very briefly. 15:21:21

13 We obviously can't on the phone put in 15:21:23

14 all of our evidence, but we can put in, for 15:21:25

15 example, I could read to you, and we would be 15:21:28

16 happy to do that in a motion, which is what we 15:21:30

17 are seeking here, a motion for leave to seek 15:21:33

18 supplement to the additional evidence, but, I 15:21:37

19 mean, for example, I asked Mr. Prates, "Is it 15:21:38

20 safe to say that if Syngenta is recommending 15:21:39

21 combinations of benzovindiflupyr, propiconazole, 15:21:43

22 and mancozeb, that does have some basis to show 15:21:49

23 added value in terms of resistance management or 15:21:52

24 some other properties?" 15:21:55

25 He said, "Yes, correct." 15:21:56

1           And so we're not speculating in terms of 15:21:57  
2   these documents. These are formulations that are 15:21:59  
3   covered by and tested by Mr. Prates. We're not 15:22:03  
4   seeking all possible documents or these 15:22:06  
5   combinations, we're just seeking the documents 15:22:08  
6   sufficient to show the beneficial properties they 15:22:11  
7   have already identified. And they -- you know, 15:22:15  
8   yes, it's true, objective indicia don't help for 15:22:20  
9   anticipation, but they have multiple grounds of 15:22:24  
10   obviousness and multiple grounds of enablement. 15:22:26  
11   So we can show and we can walk through in our 15:22:30  
12   motion, we can walk through the testimony of 15:22:31  
13   Mr. Prates where he either said we do have basis 15:22:34  
14   or we would have documents reflecting the 15:22:38  
15   information that we're seeking. Thank you. 15:22:40  
16           MR. BUCCA: Yes. One last -- 15:22:45  
17           JUDGE YANG: All right. 15:22:45  
18           MR. BUCCA: -- point, Your Honor. 15:22:46  
19           JUDGE YANG: Now we're never going to 15:22:49  
20   end. 15:22:51  
21           MR. BUCCA: Yeah, I'm sorry. 15:22:51  
22           JUDGE YANG: There's always one last 15:22:51  
23   point. 15:22:52  
24           MR. BUCCA: Okay. I'm sorry. But that 15:22:53  
25   was a very selective reading. By and large, the 15:22:56

20

1 declarant said he didn't know what Syngenta had 15:22:59  
2 and, again, this is a fact witness, and we were 15:23:02  
3 objecting to these questions as well outside the 15:23:05  
4 scope. They should actually be all stricken. 15:23:08

5 JUDGE YANG: All right. That's that. 15:23:14  
6 Give us just a few minutes and the panel will 15:23:15  
7 discuss and we'll be right back. Please stay on 15:23:19  
8 the line. 15:23:22

9 MR. BUCCA: Thank you. 15:23:25

10 JUDGE YANG: All right. The panel is 15:26:01  
11 back. Are the parties still here? Petitioner? 15:26:03

12 MR. BUCCA: Yes, Petitioner is here. 15:26:08

13 JUDGE YANG: Owner? 15:26:10

14 MR. FELDSTEIN: Yes, Your Honor. 15:26:12

15 JUDGE YANG: All right. So on the first 15:26:13  
16 issue, on the field books, as we discussed, 15:26:16  
17 Petitioner will produce by the close of business 15:26:19  
18 on Wednesday this week. 15:26:24

19 On the second category, the panel will 15:26:27  
20 authorize a motion for additional discovery. 15:26:32

21 We have some advice for Patent Owner. 15:26:37  
22 We can tell you we are not very persuaded at this 15:26:40  
23 time. We think your request is quite broad and 15:26:50  
24 we suggest that you consider Petitioner's 15:26:54  
25 argument, which you just heard, that this is a 15:26:59

21

1 fishing expedition and to narrow your request. 15:27:01

2 With that, we do authorize a motion, not 15:27:11

3 granting the motion, just authorize the motion at 15:27:16

4 this time. 15:27:19

5 MR. BUCCA: Your Honor -- 15:27:25

6 MR. FELDSTEIN: Thank you, Your Honor. 15:27:25

7 MR. BUCCA: -- this is Petitioner. I'm 15:27:26

8 sorry. 15:27:27

9 Your Honor, this is Petitioner. Will we 15:27:29

10 have an opportunity to respond to the motion? 15:27:31

11 JUDGE YANG: Yes. Yes, of course. We 15:27:35

12 are, we are working on the page and the time. We 15:27:39

13 will be right back with you on that. 15:27:43

14 MR. FELDSTEIN: Your Honor, can I put in 15:27:47

15 a suggestion, or proposal at least, from 15:27:48

16 Petitioner's side -- the Patent Owner's side for 15:27:51

17 the timing on this? We think we can cover this 15:27:53

18 in five pages, assuming it's okay to attach the 15:27:58

19 transcript as an exhibit, and given the timing, 15:28:02

20 we would be able to get it in by the end of the 15:28:05

21 day on Wednesday. 15:28:08

22 JUDGE YANG: So, so you want the motion 15:28:15

23 in by, by the close of business on Wednesday? 15:28:19

24 Did I hear you on that correct? 15:28:26

25 MR. FELDSTEIN: Yeah, if we're talking 15:28:29

22

1 about close of business, we liberally could be, 15:28:31

2 you know, before midnight sometime. 15:28:34

3 JUDGE YANG: Yeah. Right. Correct. 15:28:35

4 MR. FELDSTEIN: Then, yes, we would -- 15:28:37

5 JUDGE YANG: Yes. Lawyers and the Board 15:28:40

6 always work until 11:59. Yes. We understand 15:28:42

7 that. 15:28:45

8 MR. FELDSTEIN: Yes. Yes. So we would, 15:28:46

9 we would put it in, we request five pages, and we 15:28:47

10 would do it by the end of the day on Wednesday so 15:28:51

11 that we can keep the ball rolling. 15:28:53

12 JUDGE YANG: All right. Petitioner, 15:28:56

13 same page number, five business days, would that 15:29:02

14 be -- does that work for you? To file your 15:29:12

15 opposition? 15:29:16

16 MR. BUCCA: I believe it should. You 15:29:18

17 know, Your Honor, as I said, some of what we 15:29:20

18 heard today was new, it was very different than 15:29:22

19 what they were writing to us, so we're not sure 15:29:26

20 what to expect. 15:29:29

21 JUDGE YANG: Well, at this time, for -- 15:29:31

22 we have already narrowed down to just the one 15:29:35

23 category of the documents, so let's just say both 15:29:37

24 parties will work your best and get this done on 15:29:42

25 time. 15:29:48

23

1                   So we will issue an order, authorize                   15:29:50

2   Patent Owner to file a motion for additional                   15:29:54

3   discovery due on Wednesday, five pages, five                   15:29:57

4   pages for Petitioner to submit its opposition,                   15:30:06

5   also five pages. All right?                   15:30:13

6                   MR. BUCCA: Thank you, Your Honor.                   15:30:16

7                   MR. FELDSTEIN: Thank you, Your Honor.                   15:30:18

8                   JUDGE YANG: All right. If there is no                   15:30:19

9   other questions, then we are adjourned. Thank                   15:30:21

10   you.                   15:30:24

11                   MR. FELDSTEIN: Thank you. Bye.                   15:30:26

12                   MR. BUCCA: Thank you, Your Honor.                   15:30:27

13                   [Hearing adjourned at 3:30 p.m. EST]                   15:30:31

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## CERTIFICATE OF REPORTER

I, Denise M. Munguia, RDR, CRR, CRC, CLR, California CSR #14033, Michigan CSR #15974, a Notary Public within and for the State of Ohio, the officer before whom the proceedings were taken, do hereby certify that the foregoing transcript is a true and accurate record of these proceedings; that said proceedings were taken in Stenotype notes by me on the 16th day of October, 2023, commencing at 3:00 p.m. EST and ending at 3:30 p.m. EST.

I further certify that present on behalf of Petitioner Syngenta Crop Protection AG were Daniel Bucca, Ph.D., Esq., and David M. Klecyngier, Esq., of BakerHostetler and on behalf of Patent Owner UPL Ltd. were Mark J. Feldstein, Esq., and Kenneth S. Guerra, Esq., of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.

I further certify that I am not related to, nor associated with any of the parties or their attorneys, nor do I have any disqualifying interest, personal or financial, in the actions within.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at North Olmsted, Ohio, on this 17th day of October, 2023.



Denise M. Munguia, Notary Public  
Within and for the State of Ohio

My commission expires May 23, 2025.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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