

Guerra, Kenneth

From: Bucca, Daniel <dbucca@bakerlaw.com>
Sent: Friday, November 3, 2023 12:29 PM
To: Guerra, Kenneth; Herbert, Toni-Junell; Feldstein, Mark; Gupta, Raj; UPL-PGR-FINNEGAN
Cc: Carson, Charles C.; Klecyngier, David M.; EXT-Mrick@bakerlaw.com
Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]



EXTERNAL Email:

Counsel,

Regarding the severity data produced by Petitioner, no information was redacted in Exhibit 1031. The columns that are blacked-out in Exhibit 1031 did not contain information. As we represented with the production of Exhibit 1032 and to the Board, we produced all severity data for the days that were collected. Further, Dr. Prates' testimony about eight assessments for severity is consistent with, and shown in, his declaration (Exhibit 1020).

Additionally, Petitioner will not oppose a motion to withdraw Ms. Maximilienne Giannelli as back-up counsel.

Kind regards,

Daniel Bucca, Ph.D.
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From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>
Sent: Thursday, November 2, 2023 4:47 PM
To: Herbert, Toni-Junell <therbert@bakerlaw.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Cc: Carson, Charles C. <ccarson@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>
Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

Counsel,

Thank you for producing EX1033. We still await your response regarding the "severity" data collected and produced by Syngenta, as previously requested.

Additionally, Patent Owner will be requesting the Board's permission to file a motion to withdraw Maximilienne Giannelli as backup counsel. Will Petitioner oppose this motion?

Please provide your responses by COB Friday, November 3.

Best,
Ken

Kenneth S. Guerra
Associate

Pronouns: He, Him, His

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FINNEGAN

From: Guerra, Kenneth

Sent: Friday, October 27, 2023 4:38 PM

To: Herbert, Toni-Junell <therbert@bakerlaw.com>; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>

Cc: Carson, Charles C. <ccarson@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>

Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

Counsel,

We seek clarification regarding the "severity" data collected and produced by Syngenta. You represented during the October 26, 2023, conference with the Board that Syngenta "has provided Patent Owner with all of the severity data." EX2019, 7:23-8:1. However, even considering EX1031 and EX1032 together, it appears that data has been and remains redacted. *E.g.*, EX1031 at 2 (redaction after 49 days), 3 (redaction after 35 days), 4 (redaction after 42 days), 5 (redaction after 35 days), 7 (redaction after 42 days), 9 (redaction after 42 days), and 10 (redaction after 42 days). In this regard, Dr. Prates testified that he "assess[ed] the disease severity in every seven days... Eight assessments, in total" (EX2018, 43:7-15), which corresponds to measurements up to 56 days. Can you clarify the difference between (1) your representation and (2) the testimony of Dr. Prates and the produced severity data?

You additionally represented to the Board that the "field book" was in a database format that would need to be pulled and reformatted. EX2019, 12:1-7. To minimize burden on Syngenta to produce the data and to facilitate our review without the need for additional time, we ask that Syngenta produce the "field book" data in Excel .xlsx format.

Best,
Ken

Kenneth S. Guerra
Associate

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FINNEGAN

From: Herbert, Toni-Junell <therbert@bakerlaw.com>

Sent: Tuesday, October 24, 2023 11:40 AM

To: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Cc: Carson, Charles C. <ccarson@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>

Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

EXTERNAL Email:

Counsel,

We are similarly available at all times preferred by the Board.

Petitioner's Position regarding scheduling

Petitioner's position regarding scheduling is that further modification of the due dates are unnecessary at this time. Rather, the due dates in this case have already been extended once, by two-weeks, at the request of Patent Owner. As a result, under Patent Owner's proposed schedule, Patent Owner would have about one extra month from institution to file its Response. In contrast, if any unforeseen challenges arise during Petitioner's Reply to Patent Owner's Response, it may not be possible to satisfactorily modify the schedule. Accordingly, Petitioner cannot agree to the proposed modification.

At most, as previously indicated, Petitioner proposed a conditional compromise to November 3 rather than November 9 as Patent Owner requests.

Please include the above in your correspondence to the Board.

Kind regards,

Toni

Toni Herbert
Partner

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From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>

Sent: Monday, October 23, 2023 4:30 PM

To: Herbert, Toni-Junell <therbert@bakerlaw.com>; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Esper, William <William.Esper@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>

Cc: Klecyngier, David M. <dklecyngier@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C.

<ccarson@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>

Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

Counsel,

Pursuant to the Board's instructions, please let us know Petitioner's preferred time for the Board conference on 10/26 or 10/27 between 2-4 pm ET. Patent Owner is available at all those times.

Regarding the scheduling issue, Patent Owner will propose to the Board:

- i. modifying DD1 and DD2 by the later of: 10 days (to November 9th) or 7 days after Petitioner produces all discovery ordered by the Board; and
- ii. modifying DD3 by the number of days by which modification (i) exceeds 10 days, if any.

Patent Owner believes that this is reasonable under the circumstances, including where Patent Owner will not be filing a motion to amend, and without prejudice to Petitioner. Please let us know if Petitioner can agree or provide your alternative position.

We look forward to your response on both points by noon tomorrow (10/24), so that we can timely inform the Board.

Best,
Ken

Kenneth S. Guerra
Associate

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FINNEGAN

From: Herbert, Toni-Junell <therbert@bakerlaw.com>

Sent: Monday, October 23, 2023 9:25 AM

To: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Esper, William <William.Esper@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>

Cc: Klecyngier, David M. <dklecyngier@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>

Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

EXTERNAL Email:

Hello Ken,

Your characterization of what Syngenta would willingly produce from the "field books" is incorrect and overlooks our consistent representations, which include:

- October 16: Our email to the Honorable Board wherein we stated that “Petitioner is 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).”
- October 10: Our email to Patent Owner’s Counsel wherein we stated “we intend to voluntarily provide the underlying data in the tables of the Prates Declaration upon entry of the modified protective order.” We also pointed out in the same correspondence the “‘field books’ are not in physical form perse, but are rather an electronic database including information not relevant to the Prates Declaration.”
- September 27: Our email to Patent Owner’s Counsel wherein we stated that “if you wanted the raw data underlying the declaration of Dr. Prates you should have requested that information well before Dr. Prates deposition.”

The Board used language tracking our representation and, If anything was ordered of Petitioner, it was as to the date we would willingly produce the “underlying data from the ‘field books’ for the testing described in Petitioner’s [Prates Declaration]”; there was no dispute or discussion with the Board regarding any disagreement as to what we had willingly agreed to produce from the “field books.”

As stated in our last email, there is a typographical error in our discussion regarding the % severity at 42 and 49 DAAA. The email reads: However, we are not inclined to provide this information as it is not information he relied on, to the extent it is available. It should have read: Although, we are not inclined to provide this information as it is not information he relied on, to the extent it is available, we will provide it. We are still in the process of investigating the % severity at 42 and 49 DAAA data and intend to produce it, if available, by Wednesday, the 25th.

We can be available on Wednesday should you request further conference with the Board.

Kind regards,

Toni

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Partner

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From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>

Sent: Friday, October 20, 2023 7:12 PM

To: Herbert, Toni-Junell <therbert@bakerlaw.com>; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>; Esper, William <William.Esper@finnegan.com>

Cc: Klecyngier, David M. <dklecyngier@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>

Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

Hi Toni,

Thank you for your response regarding Syngenta's field books and the schedule. It appears, however, that the parties are fundamentally at an impasse. Accordingly, we will contact the Board to request further conference. We are not available on Tuesday (10/24) and will propose the conference for Wednesday (10/25). If you would like us to include Petitioner's availability for Wednesday, please advise no later than tomorrow (10/21).

To be clear, however, on September 25, 2023, we requested from Syngenta "[t]he 'field books' containing ***all the data and assessments*** that Syngenta performed in relation to the trials addressed in Dr. Prates declaration[.]" EX3002, 7 (emphasis added). As reflected in the Prates Declaration, these trials included assessments of, *inter alia*, (1) % Phytotoxicity (7, 14 Days after all applications), (2) % Defoliation, and (3) Yield (kg/ha). E.g., EX1020, ¶¶5, 9. Dr. Prates confirmed that the field books for the trials addressed in his declaration contain these assessments. E.g., EX2018, 14:4-17.

You replied on September 27, 2023, that "Syngenta is willing to provide copies of the 'field books.'" EX3003, 6. Your unequivocal agreement was in no way limited to "***data that Dr. Prates used*** to calculate the % efficacy or disease control testing provided in his Declaration" (emphasis added), referenced in your email of today. Nor would any such self-serving limitation have been agreeable to Patent Owner.

The Board then ordered Syngenta to produce "the underlying data from the 'field books' for the testing described in Petitioner's [Prates Declaration]" not later than close of business on October 18, 2023. See Paper 22, 2-3; EX2017, 20:15-18. Again, the Board's order was not limited to data Dr. Prates used to calculate the % efficacy or disease control.

Syngenta, however, did not produce and is now refusing to produce the underlying data from the field books. We thus understand that Syngenta is in violation of the Board's order and has reneged on its prior agreement. Hence, as addressed above, it appears necessary to seek further relief from the Board.

We also cannot agree to your proposal for a 3-day adjustment of the schedule conditioned on Patent Owner "withdraw[ing] [its] Motion for Additional Discovery and agree[ing] to drop [its] requests for testing and data not relied on in the Declaration." Among other things, it is improper for Syngenta to seek to leverage its violation of the Board's order and refusal to honor its prior agreement. Further, to be clear, the additional time for Patent Owner's POR was to account for Syngenta's delay and still incomplete production of the field books as well as the still unresolved Motion for Additional Discovery. Moreover, the adjustment would be without prejudice to Syngenta. It would not reduce the time for Syngenta's Reply; instead, it would reduce time for Patent Owner's Sur Reply between DD2 and DD3. Accordingly, we will raise the schedule with the Board as well.

Best,
Ken

Kenneth S. Guerra
Associate

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FINNEGAN

From: Herbert, Toni-Junell <therbert@bakerlaw.com>

Sent: Friday, October 20, 2023 4:14 PM

To: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Giannelli, Maximilienne

<Maximilienne.Giannelli@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; Feldstein, Mark

<mark.feldstein@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>; Esper, William

<William.Esper@finnegan.com>

Cc: Klecyngier, David M. <dklecyngier@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>

Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

EXTERNAL Email:

Hello Kenneth,

You request:

1. a nearly two week extension of time to file your Reply (from October 30 to November 9);
2. that we produce data relating to phytotoxicity, defoliation, and yield even though no such results were used in Dr. Prates declaration;
3. the % severity at 42 and 49 DAAA; and
4. that we "explain why the redacted information is not related to the underlying data for the testing described in the Prates Declaration."

To be clear, it is your burden to explain and support any argument that any of this is even necessary to be produced. Despite that, we willingly agreed to provide you the data Dr. Prates used and relied on for his declaration. We produced to you all of the data that Dr. Prates used to calculate the % efficacy or disease control testing provided in his Declaration. As has been clear from the beginning in his Declaration, phytotoxicity, defoliation, and yield were carried out in the trials/tests but not part of the efficacy calculations or relied on in his Declaration.

As for the % severity at 42 and 49 DAAA we have been unable to reach Dr. Prates as he is apparently traveling; we hope to reach him sometime this coming weekend. However, we are not inclined to provide this information as it is not information he relied on, to the extent it is available.

In terms of your most recent request for an additional extension of time for your Reply, your present request would, in the end, afford you nearly 6 weeks of additional time for filing your Reply from the date of Institution—a 50% grant of extra time for no real reason. Stated differently, rather than having 3 months to reply from institution, you would have 4 .5 months, whereas Petitioner will still have 3 months discovery and time to file our opposition.

We would be willing to agree to an extension to November 3 and provide % severity at 42 and 49DAAA, to the extent it is available, if you are willing to withdraw your Motion for Additional Discovery and agree to drop your requests for testing and data not relied on in the Declaration; saving not only the Board's time but also costs for both our clients.

We can be available Tuesday should you think an agreement cannot be reached.

Regards,
Toni

Toni Herbert
Partner

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From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>

Sent: Thursday, October 19, 2023 12:03 PM

To: Carson, Charles C. <ccarson@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Herbert, Toni-Junell <therbert@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Cantu, Monica L. <mlcantu@bakerlaw.com>

Cc: Gupta, Raj <Raj.Gupta@finnegan.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>; Esper, William <William.Esper@finnegan.com>

Subject: RE: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

[External Email: Use caution when clicking on links or opening attachments.]

Counsel,

Thank you for providing confidential Exhibit 1031. It appears, however, that Syngenta did not fully comply with producing "the underlying data from the 'field books' for the testing described in Petitioner's [Prates Declaration]." See Paper 22, 6; EX2017, 20:15-18.

First, the testing described in the Prates Declaration included assessment of (1) % Phytotoxicity (7, 14 Days after all applications), (2) % Defoliation, and (3) Yield (kg/ha). E.g., EX1020, ¶¶5, 9. Mr. Prates further testified that the field books for the trials described in his declaration contain these assessments. E.g., EX2018, 14:4-17. Syngenta has not provided this data.

Second, according to the Prates Declaration, % severity was also measured at 42 and 49 DAAA. EX1020, ¶¶5, 9. This information appears to have been omitted or redacted from the data provided. See EX1031, pg. 2-5, 7-10.

Accordingly, please produce all the underlying data from the "field books" for the testing described in the Prates Declaration no later than close of business tomorrow, Friday 10/20. This should include at least (1) % Phytotoxicity (7, 14 Days after all applications), (2) % Defoliation, (3) Yield (kg/ha), and (4) % severity at 42 and 49 DAAA. To the extent the redactions in EX1031 are not provided with this information, please explain why the redacted information is not related to the underlying data for the testing described in the Prates Declaration. If Syngenta does not agree to produce this information by COB Friday 10/20, please let us know your availability (1) to meet and confer and (2) for a follow-up call with the Board.

Additionally, to allow time for production, review of the field book data, and hopefully for resolution of UPL's Motion for Additional Discovery (Paper 23), we propose that the parties stipulate to the revised schedule below. Please let us know if you agree to this amended schedule by COB Friday 10/20. We are also available to meet and confer on this, as advised by the Board. EX2017, 14:10-24.

Due Date	Current	Proposed
DD1 (POR)	October 30, 2023	November 9, 2023
DD2 (Pet. Reply)	January 30, 2024	February 9, 2023
DD3 (PO Sur Reply)	March 5, 2024	No change
DD4 (Req. OA)	February 27, 2024	No change
DD5 (MTE)	March 19, 2024	No change
DD6 (Opp. MTE)	March 26, 2024	No change
DD7 (Reply Opp. MTE)	April 2, 2024	No change
DD8 (OA)	April 15, 2024	No change

Best,
Ken

Kenneth S. Guerra

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FINNEGAN

From: Cantu, Monica L. <mlcantu@bakerlaw.com>

Sent: Wednesday, October 18, 2023 4:59 PM

To: Feldstein, Mark <mark.feldstein@finnegan.com>; Giannelli, Maximilienne <Maximilienne.Giannelli@finnegan.com>;

Gupta, Raj <Raj.Gupta@finnegan.com>; Guerra, Kenneth <Kenneth.Guerra@finnegan.com>

Cc: Carson, Charles C. <ccarson@bakerlaw.com>; Herbert, Toni-Junell <therbert@bakerlaw.com>; Bucca, Daniel

<dbucca@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>

Subject: Syngenta v. UPL, PGR2023-00017 - Document Production [PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY]

EXTERNAL Email:

Counsel,

Provided below is a link to a secure site where you can retrieve production of the underlying data from the "field books" for the testing described in Petitioner's Exhibit 1020 ("Prates Declaration").

The production document and its contents are being produced under the Modified Protective Order and are marked PROTECTIVE ORDER MATERIAL - ATTORNEY'S EYES ONLY.

Petitioner believes the production is in an appropriate form and self-explanatory. However, counsel for Petitioner is available to meet and confer should you disagree.

<https://globalftp.bakerlaw.com/w/f-f59f8ab8-d4bb-470e-affb-878227582e31>

Regards,

Monica Cantu

She | Her | Hers

Paralegal

BakerHostetler

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