From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>
Sent: Monday, January 8, 2024 11:00 AM
To: Herbert, Toni-Junell
Cc: Bucca, Daniel; Carson, Charles C.; Klecyngier, David M.; Rick, Michelle; Mehta, Rakesh; Feldstein, Mark; Gupta, Raj; UPL-PGR-FINNEGAN
Subject: RE: RE:PGR2023-00017

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

Hi Toni,

We were unable to respond to your Friday email by COB the same day due to UPL time zone considerations. Based on the information you provided, UPL will oppose leave by Syngenta to file its proposed motion for additional discovery. We are available for a conference call with the Board on January 11 from 10 am to 12 pm and 2 pm to 7 pm.

We also note that your email failed to include UPL's designated service email address and all counsel of record. We have added them to this reply.

Best,
Ken

Kenneth S. Guerra
Associate
Pronouns: He, Him, His
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FINNEGAN

From: Herbert, Toni-Junell <therbert@bakerlaw.com>
Sent: Friday, January 5, 2024 11:40 AM
To: Feldstein, Mark <mark.feldstein@finnegan.com>; Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Mehta, Rakesh <rmehta@bakerlaw.com>
Cc: Bucca, Daniel <dbucca@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>
Subject: RE:PGR2023-00017

Dear Counsel,

Please advise whether you would oppose a motion by Petitioner to seek: (1) the underlying data and materials related to the examples in the patent at issue (the '727 patent) or, in the alternative that the underlying data and materials cannot be found; (2) a deposition of inventor Rajju Devidas Shroff, resident in India where the experiments for the examples took place.

Please also provide multiple times you are available next week for a conference call with the Board. We ask that you provide your availability no later than the close of business today.

Kind Regards,
Toni

Toni Herbert
Partner

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From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>
Sent: Tuesday, January 2, 2024 1:08 PM
To: Herbert, Toni-Junell
Cc: Carson, Charles C.; Klecyngier, David M.; Bucca, Daniel; Rick, Michelle; Feldstein, Mark; Gupta, Raj; UPL-PGR-FINNEGAN
Subject: RE: Syngenta v. UPL, PGR2023-00017

Toni,

As we noted from the start, you have continuously misrepresented Dr. Jacobsen's declaration. To be clear, we disagree that his opinions rely on testing referenced in the '727 patent. You have further failed to provide legal and factual bases for any of your proposed discovery fishing expeditions. Indeed, it is not even clear from your evolving demands what discovery Syngenta now seeks. What is clear, however, is that the information sought is unlike the additional discovery of Syngenta's testing ordered by the Board, which you directed and relied upon specifically for the purposes of this proceeding, intentionally withheld, and misrepresented as "not helpful to Patent Owner" (EX2019, 10:13-14).

Accordingly, while you can inform the Board that we are available on January 3, 2023 from 2-4 pm and January 4, 2023 from 10 am to 1 pm, please advise them that it remains Patent Owner's position that there is no dispute ripe for their consideration. Likewise, to the extent you have any other information—factual or legal—in support of your extraordinary additional discovery, please fully advise us today rather than sandbagging us before the Board.

Best,
Ken

Kenneth S. Guerra
Associate
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FINNEGAN

From: Herbert, Toni-Junell <therbert@bakerlaw.com>
Sent: Friday, December 29, 2023 4:52 PM
To: Guerra, Kenneth <Kenneth.Guerra@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>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>
Subject: RE: Syngenta v. UPL, PGR2023-00017

***EXTERNAL* Email:**

Ken,

We note that you do not dispute that Dr. Jacobsen relied in his declaration on the testing referenced in the '727 patent. As such we are entitled to all data, protocols, assessments, etc. relating to that testing as more specifically identified in our email dated Dec. 13. We further understand that you have investigated and determined that none of the identified data or other information exists. This is surprising given the discussion of the testing in the ' patent, UPL's reliance upon it during prosecution as described in our petition, and Dr. Jacobsen's reliance upon it in his declaration. Your representation that no documentation exists only underscores the need to depose the '727 inventor regarding the testing and to determine, for example, whether the disclosed testing was actually performed and the underlying documentation discarded or lost.

Please give your availability for a call with the Board between January 3-5, 2024.

Kind regards,
Toni

Toni Herbert
Partner

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From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>
Sent: Wednesday, December 27, 2023 6:06 PM
To: Herbert, Toni-Junell <therbert@bakerlaw.com>
Cc: Bucca, Daniel <dbucca@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Subject: RE: Syngenta v. UPL, PGR2023-00017

Hi Toni,

Syngenta has provided neither factual nor legal bases to justify any of its now multiple requests for additional discovery. Your continued fishing also suggests that you may be trying to fabricate a dispute to raise with the Board.

Nevertheless, as previously explained, UPL investigated and was unable to locate data relating to trials described in the '727 patent beyond those reported therein. UPL will also not agree to the deposition of Mr. Rajju Devidas Shroff.

Best,
Ken

Kenneth S. Guerra
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FINNEGAN

From: Herbert, Toni-Junell <therbert@bakerlaw.com>
Sent: Tuesday, December 26, 2023 12:02 PM
To: Feldstein, Mark <mark.feldstein@finnegan.com>; Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Cc: Bucca, Daniel <dbucca@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>
Subject: Re: Syngenta v. UPL, PGR2023-00017

***EXTERNAL* Email:**

Counsel,

Further to our email below, we ask that you respond to us by the close of business Wednesday (December 27th) about availability of underlying data and whether you will voluntarily make Rajju Devidas Shroff available for a deposition.
Kind Regards,
Toni

Toni Herbert
Partner

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From: Herbert, Toni-Junell
Sent: Wednesday, December 20, 2023 4:09 PM
To: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Bucca, Daniel <dbucca@bakerlaw.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Cc: Klecyngier, David M. <dklecyngier@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>; Bucca, Daniel <dbucca@bakerlaw.com>
Subject: RE: Syngenta v. UPL, PGR2023-00017

Dear Counsel,

We are bit confused by your assertion. Dr. Jacobsen unambiguously relies on the testing in the '727 patent. For example, we cited to paragraph 52 of Jacobsen's declaration in our original email. Indeed, unless Jacobsen did not review this portion of the '727, it is unclear how the data would not influence his opinion.

Further, we would also like to confirm that you and UPL investigated the availability of underlying material, correct? And that nothing was found? We understand such material allegedly existed as the '727 plainly states, *e.g.*, "trials were carried out at *various* locations in India." Accordingly, the results provided in the '727 would presumably be averages. As you are aware, disease control is based on disease severity/pressure. As such, we expect disease severity/pressure would have been collected to determine a % control.

To this end, we further note that the testing protocol used in the '727 patent is at issue. Since these trials were "carried out at various locations in India" and you are representing the data and protocol material, etc. do not now exist, we now ask whether you will voluntarily make available the one inventor who may be able to provide information as to the trials in India: inventor, Rajju Devidas Shroff, residence in India. For convenience, we would be willing to take the deposition remotely.

Kind Regards,

Toni Herbert
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From: Guerra, Kenneth <Kenneth.Guerra@finnegan.com>
Sent: Tuesday, December 19, 2023 6:52 PM
To: Bucca, Daniel <dbucca@bakerlaw.com>; Feldstein, Mark <mark.feldstein@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Cc: Herbert, Toni-Junell <therbert@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>
Subject: RE: Syngenta v. UPL, PGR2023-00017

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

Counsel,

Your emails misrepresent Dr. Jacobsen's Declaration and provide neither factual nor legal bases to support your request for data underlying examples in the '727 patent. Nevertheless, UPL has investigated and was unable to locate any data beyond those reported in the '727 patent.

Best,
Ken

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FINNEGAN

From: Bucca, Daniel <dbucca@bakerlaw.com>
Sent: Monday, December 18, 2023 10:31 AM
To: Feldstein, Mark <mark.feldstein@finnegan.com>; Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Cc: Herbert, Toni-Junell <therbert@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; EXT-Mrick@bakerlaw.com <Mrick@bakerlaw.com>
Subject: RE: Syngenta v. UPL, PGR2023-00017

***EXTERNAL* Email:**

Counsel,

Further to our email below, we ask that you respond to our email about producing data relied upon by Dr. Jacobsen by the close of business Tuesday (December 19th).

Regards,

Daniel Bucca, Ph.D.
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M +1.703.402.9442

From: Bucca, Daniel
Sent: Wednesday, December 13, 2023 2:29 PM
To: Feldstein, Mark <mark.feldstein@finnegan.com>; Guerra, Kenneth <Kenneth.Guerra@finnegan.com>; Gupta, Raj <Raj.Gupta@finnegan.com>; UPL-PGR-FINNEGAN <UPL-PGR-FINNEGAN@finnegan.com>
Cc: Herbert, Toni-Junell <therbert@bakerlaw.com>; Klecyngier, David M. <dklecyngier@bakerlaw.com>; Carson, Charles C. <ccarson@bakerlaw.com>; Rick, Michelle <MRick@bakerlaw.com>
Subject: Syngenta v. UPL, PGR2023-00017

Counsel,

We note that in Dr. Jacobsen's Declaration he relies on the examples of the '727 patent as "demonstrating the effectiveness of the fungicidal combinations of the invention … as shown in Table 1." Ex2020 at paragraph 52. As such, we ask that you provide all data and assessments in relation to the Examples referred to in the '727 Patent and Table 1 including any testing/experimental protocol, the underlying data for disease control, and any calculations or determinations of efficacy, disease control, and synergistic effect.

Regards,

Daniel Bucca, Ph.D.
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Counsel

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