

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Cyanotech Corporation  
Petitioner

v.

The Board of Trustees of the University of Illinois  
Patent Owner

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Case: IPR2013-00401

Patent No.: 5,527,533

**RESPONSE OF PATENT OWNER**  
**THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS**

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## I. BACKGROUND

Cyanotech Corp.’s (“Cyanotech”) Petition requesting *inter partes* review of U.S. Pat. No. 5,527,533 (“Tso patent”) raised four grounds of invalidity. On October 2, 2013, Patent Owner, the Board of Trustees of the University of Illinois (“University”), filed a Preliminary Response opposing the Petition on procedural—but not substantive—grounds. On December 19, 2013, the Patent Trial and Appeals Board (“Board”) issued a Decision denying the Petition as to claims 16–20, 23–25, and 27, but instituting review as to claims 1–15, 21, 22 and 26.

As to the instituted claims, the Board agreed to consider only two of the four grounds identified in Cyanotech’s petition: (i) anticipation under 35 U.S.C. § 102 in view of Rene Grangaud, “Recherches sur l’Astaxanthine, Nouveau Facteur, Vitaminique A” (1951) (“Grangaud”) (English translation submitted as Ex. 1002) (claims 1, 3, 8–24, and 26); and (ii) obviousness 35 U.S.C. § 103 in view of Grangaud in combination with Dowling et al., “The effect of vitamin A deficiency on the fine structure of the Retina,” in *The Structure of the Eye* (New York 1961) (“Dowling”) (submitted as Ex. 1026) (claims 1–15, 21, 22, and 26).

## II. SUMMARY OF THE ARGUMENT

Cyanotech has failed to meet its burden of demonstrating that the methods of claims 1–15, 21, 22, and 26 of the Tso patent are anticipated or would have been obvious as of the date of invention. Grangaud and Dowling are directed to

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