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
_____

Case IPR2013-00401[1]

Patent 5,527,533

Before SCOTT E. KAMHOLZ, SHERIDAN K. SNEDDEN, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges.*

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**PETITIONER'S MOTION TO EXCLUDE EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(c)**

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Submitted: June 9, 2014

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[1] Consolidated with Case IPR2013-00404

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I.   Statement of the Precise Relief Requested

Pursuant to 37 C.F.R. § 42.64(c), Cyanotech Corporation (**"Petitioner"**)

hereby moves to exclude Exhibits 2033-2036, submitted by the Board of Trustees

of the University of Illinois (**"Patent Owner"**) in support of its Response (**"Resp."**)

(Paper No. 32).

Petitioner objects to the licensing agreements submitted as Patent Owner's

Exhibits 2033-2036 because they have been offered in an attempt to prove that

others objectively valued the challenged claims.   Petitioner served timely

objections to evidence for the licensing agreements originally submitted as

Exhibits 2028-2031 on March 21, 2014 with Paper No. 32.   On April 11, 2014,

Patent Owner submitted a response to Petitioner's Exhibits (Paper No. 34) and

Exhibits 2033-2036 as replacement exhibits for Exhibits 2028-2031.   Petitioner

now moves to exclude the replacement exhibits because they are irrelevant

(Federal Rules of Evidence ("FRE") 402), and also highly confusing, misleading

and would lead to an unnecessary waste of time to address (FRE 403).

II.   Basis for Exclusion of Licensing Exhibits (Ex. 2033-2036)

A.   Statement of Material Facts

Patent Owner has offered four licensing agreements (Ex. 2033-2036) in

support of its argument that the challenged claims are not obvious because of the

"strong licensing history" of the patent in issue.   (Resp. at 49).   Patent Owner

originally licensed U.S. Patent No. 5,527,533 ("the Tso Patent") to LaHaye

Laboratories, Inc. ("LaHaye"). In 2002, U.S. Nutraceuticals, LLC d/b/a Valensa

International ("Valensa") purchased the assets of LaHaye, including LaHaye's

rights in the Tso Patent. (*Id.*) The four licensing agreements at issue were

between Valensa and Futurebiotics, LLC ("Futurebiotics") (Ex. 2033), Quality

Supplements and Vitamins, Inc. d/b/a Life Extension ("Life Extension") (Ex.

2034), NOW Health Group, Inc. ("NOW") (Ex. 2035), and Swanson Health

Products, Inc. ("Swanson") (Ex. 2036). Patent Owner has not proffered any

evidence establishing a nexus between the licenses and the challenged claims.

(*See* Resp. at 49.)

i. Futurebiotics License (Ex. 2033)

The Futurebiotics license (Ex. 2033) (Resp. at 49) is identified as a "Product

Use and Trademark License," not a patent license agreement. It grants

"trademark rights and patent rights," "Product related trade secrets and know-how"

and rights to manufacture and sell the "Product," which is defined as the

"Zanthin™ brand of natural astaxanthin oleoresin derived from Haematococcus

pluvialis." (Ex. 2033 at 1 and Exhibit A). The Grant of License (Section I) is

limited to trademarks rights and manufacturing rights for "products that embody or

contain the Product of Exhibit A" and makes no mention of any of the challenged

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