

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CYANOTECH CORPORATION
Petitioner

v.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS
Patent Owner

Cases IPR2013-00401 and IPR2013-00404 (consolidated)

Patent 5,527,533

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

KAMHOLZ, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

By email dated July 18, 2014, Cyanotech requested a conference call to seek authorization to file a motion to submit supplemental information under 37 C.F.R. § 42.123(b). A conference call was held on July 21, 2014.

Cyanotech seeks to submit paragraph 179 from the Expert report of the University's expert, Dr. Kaushal, from a related district court litigation. Cyanotech states that it seeks to submit this information in order to impeach Dr. Kaushal's testimony in this proceeding.

The University argues that Cyanotech is taking paragraph 179 out of context and requests that, if paragraph 179 is submitted, paragraphs 177 and 178 be submitted as well. Cyanotech does not object.

Upon consideration, we authorize Cyanotech's request. Cyanotech is reminded that it must, in its motion, show that it is entitled to the relief requested, that the supplemental information reasonably could not have been obtained earlier, and that consideration of the information would be in the interests of justice. *See* 37 C.F.R. §§ 42.20(c); 42.123(b).

Accordingly it is

ORDERED that Cyanotech is authorized to file a motion to submit supplemental information;

FURTHER ORDERED that the information sought to be submitted shall consist of paragraphs 177, 178, and 179 of Dr. Kaushal's district court expert report, no more and no less;

FURTHER ORDERED that the motion is limited to three pages and must be submitted by July 25, 2014; and

FURTHER ORDERED that no opposition is authorized at this time.

Cases IPR2013-00401, -00404
Patent 5,527,533

For PETITIONER:

Joseph A. Rhoa
NIXON & VANDERHYE P.C.

George E. Darby
PARADISE PATENT SERVICES, INC.

For PATENT OWNER:

Mark D. Schuman
Iain A. McIntyre
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Cases IPR2013-00401, -00404
Patent 5,527,533

From: George E. Darby [<mailto:darbypatent@teleport-asia.com>]
Sent: Friday, July 18, 2014 7:14 AM
To: 'trials@uspto.gov'
Cc: Joseph A. Rhoa; 'Bob Rowan'; 'Todd Werner'; 'Peter Kohlhepp'; 'Bobby Foster'; 'Mschuman@carlsoncaspers.com'; 'imcintyre@carlsoncaspers.com'; 'Russell Rigby'; gdarby@kanikapilarecords.com
Subject: IPR2013-00401. Req, for Conf. Call

Re: IPR2013-00401

Dear Patent Trials and Appeal Board:

Petitioner hereby requests a brief telephone conference with the Board to request permission to submit paragraph 179 of Dr. Kaushal's expert report in the MDFIa litigation as Supplementary Evidence in the above IPR.

Counsel for Patent Owner and for Petitioner are available 21-24 July (M-W), starting at 11 a.m. or later, EDT.

Thank you,
G. Darby
Back-up Counsel for Petitioner