

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, *Administrative Patent Judge*.

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

By email dated July 25, 2014, the University requested leave to file an opposition to Cyanotech's motion to submit supplemental information. The University does not oppose entry of the supplemental information, but it argues that Cyanotech's motion presents improper characterization or argument about the supplemental information.

Argument in a motion for late submission of supplemental information is limited to explaining why the moving party should prevail, such as by explaining how the information is relevant to a claim for which trial was instituted, why the moving party is entitled to the relief requested, why the information reasonably could not have been obtained earlier, and why consideration of the information is in the interests of justice. *See* 37 C.F.R. §§ 42.20(c), 42.123(a)-(b). Cyanotech's argument will be considered only to the extent that it addresses the issue of why it should prevail on the motion.

Accordingly it is

ORDERED that the University is authorized to file an opposition to Cyanotech's motion to submit supplemental information (Paper 60); and

FURTHER ORDERED that the opposition may be no more than two pages long, must be submitted by August 6, 2014, and is limited to identifying the portions of Cyanotech's motion that are not directed to the issue of why Cyanotech should prevail on the motion.

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
CARLSON CASPERS

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

From: Russell Rigby [<mailto:RRigby@carlsoncaspers.com>]
Sent: Friday, July 25, 2014 4:00 PM
To: Trials
Cc: jar@nixonvan.com; George Darby (darbypatent@teleport-asia.com) (darbypatent@teleport-asia.com); Mark Schuman; Todd Werner; Peter Kohlhepp
Subject: Case No. IPR2013-00401: Request for Response to Petitioner's Motion (Paper 60)

Dear PTAB,

Patent Owner is in receipt of Petitioner's "Motion to Submit Supplemental Information" (Paper No. 60). During the call earlier this week on which Petitioner's Motion was authorized, the panel made clear that the Motion should contain the three agreed-upon paragraphs from Dr. Kaushal's declaration, but should not contain further characterization or argument about those paragraphs. Petitioner ignored that instruction. The Motion contains characterizations and arguments that ignore the context of the statements at issue. Fairness requires that Patent Owner be given an opportunity to respond.

Accordingly, Patent Owner respectfully requests leave to file a two-page response to Petitioner's Motion. Patent Owner can submit the response the day after leave is given to file it.

Sincerely,

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