

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

Case: IPR2013-00401
Patent No.: 5,527,533

**PATENT OWNER'S OPPOSITION TO PETITIONER'S
MOTION TO SUBMIT SUPPLEMENTAL INFORMATION**

Patent Owner hereby responds to Petitioner's Motion to Submit Supplemental Information (Paper No. 60). As noted during the call authorizing Petitioners to file the motion, Patent Owner did not object to the three paragraphs from Dr. Kaushal's report being submitted for the panel's review.

Patent Owner did, however, object to Petitioner characterizing the statements. Petitioner was authorized to submit the three paragraphs without characterization, but ignored that requirement, prompting Patent Owner to seek this response. The improper portion of Petitioner's brief includes from the first full paragraph of page 2 to the start of the final paragraph on page 3, and is precisely the sort of characterization that was not to be included.

Petitioner claims Dr. Kaushal's declaration contradicts his testimony in this IPR. That is simply not true, as is evident from reading the paragraphs. The key language is "xerophthalmia or vitamin A deficiency," a nutritional deficiency, on the one hand and "the vast majority of retinal conditions" on the other. (CYAN Ex. 1082 at ¶ 179). The statement must be read in context.

Two paragraphs earlier, in a portion Petitioner initially did not submit, Dr. Kaushal states: "No health supplement or drugs support all aspects of 'eye health'." (CYAN Ex. 1082 at ¶ 177) He then discussed a number of specific diseases, stating "It is my opinion that when Defendants refer to general eye health or

general benefits to the eye or central nervous system, the claimed methods are the primary disorders, damage and diseases to which they refer." (*Id.* ¶ 179)

Petitioner asks the board to interpret "the vast majority" to mean "every single one, without exception, including vitamin A deficiency." Dr. Kaushal never said any such thing, and Petitioners attempted impeachment falls flat.

Dated: August 4, 2014.

Respectfully submitted,

s/Mark D. Schuman

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on August 4, 2014, a true and correct copy of the foregoing *Patent Owner's Opposition to Petitioner's Motion to Submit Supplemental Information* was served via electronic mail upon the following:

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