

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASSOCIATED BRITISH FOODS PLC, AB VISTA, INC.,
PGP INTERNATIONAL, INC., ABITEC CORPORATION,
AB ENZYMES, INC., and AB ENZYMES GMBH,
Petitioners,

v.

CORNELL RESEARCH FOUNDATION, INC.,
Patent Owner.

Case IPR2019-00577 (Patent 8,993,300 B2)
Case IPR2019-00578 (Patent 8,455,232 B2)
Case IPR2019-00579 (Patent 7,829,318 B2)
Case IPR2019-00580 (Patent 7,321,063 B2)
Case IPR2019-00581 (Patent 7,026,150 B2)
Case IPR2019-00582 (Patent 6,451,572 B1)¹

Before SUSAN L. C. MITCHELL, ROBERT A. POLLOCK, and
TIMOTHY G. MAJORS,
*Administrative Patent Judges.*²

MITCHELL, *Administrative Patent Judge.*

¹ This Order addresses issues in each of the identified proceedings. We exercise our discretion to issue one Order to be filed in each proceeding. The parties are not authorized to use this style heading in subsequent papers without prior authorization from the Board.

² This is not a decision by an expanded panel of the Board. Judges Mitchell, Pollock, and Majors are paneled in IPR2019-00577, IPR2019-00578, IPR2019-00579, and IPR2019-00580. Judges Mitchell, Pollock, and Hardman are paneled in IPR2019-00581 and IPR2019-00582, although Judge Hardman did not participate in this decision.

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DECISION

Petitioners' Motion to Submit Supplemental Information *37 C.F.R. § 42.123(a)*

On August 23, 2019, the Board granted Petitioners' request for authorization to file a motion to submit supplemental information under 37 C.F.R. § 42.123(a). *See Ex. 3003, 1.* On August 30, 2019, Petitioners filed their motion to submit supplemental information. Paper 31 ("Mot.").³ In their motion, Petitioners seek to submit priority applications for the Cheng reference, *see Ex. 1004*, asserted against the challenged claims to support Cheng's priority status that Patent Owner has questioned. Mot. 1–2. These two provisional applications are U.S. Provisional Application No. 60/019,735 and U.S. Patent No. 5,939,303 that issued from Application No. 08/744,779. Mot. 1. Petitioners state that Patent Owner does not oppose this motion. Mot. 1. For the reasons discussed below, Petitioners' motion to submit supplemental information under § 42.123(a) is granted.

ANALYSIS

As the moving party, Petitioners bear the burden of proving that they are entitled to the requested relief. 37 C.F.R. § 42.20(c). Under 37 C.F.R. § 42.123(a), a party may file a motion to submit supplemental information if the following requirements are met: (1) a request for authorization to file such a motion is made within one month of the date the trial was instituted;

³ We cite to the documents filed in IPR2019-00577 only. Similar papers are part of the record in the other five proceedings.

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and (2) the supplemental information is relevant to a claim for which trial has been instituted.

With respect to the first requirement of § 42.123(a), trial was instituted in this proceeding on July 25, 2019. Paper 25. Therefore, because Petitioners requested authorization to file a motion to submit supplemental information on August 30, 2019, Petitioners' request was made within one month of the date the trial was instituted. *See* Ex. 3003, 1. With respect to the second requirement of § 42.123(a), we find that the supplemental information Petitioners seek to submit relates to the claims for which trial has been instituted because it is directed to the prior art status of the Cheng reference that has been asserted against the challenged claims.

We are persuaded that Petitioners have met their burden because they satisfy the requirements of § 42.123(a). We also are persuaded that Petitioners have met their burden because the supplemental information Petitioners seek to submit does not change the grounds of unpatentability in this proceeding, nor does it change the evidence initially presented in the Petition to support those grounds of unpatentability. We also agree that consideration of such supplemental information will not delay the trial's schedule. Instead, such information merely constitutes additional evidence that allegedly confirms the prior art status of the Cheng reference, which we invited Petitioners to submit in our Decision on Institution. *See* Paper 25, 31.

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Accordingly, it is hereby:

ORDERED that Petitioners' motion to submit supplemental information under 37 C.F.R. § 42.123(a) is *granted*.

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