

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

THORNE RESEARCH, INC.,
Petitioner,

v.

TRUSTEES OF DARTMOUTH COLLEGE.,
Patent Owner.

IPR2021-00491
Patent 8,197,807 B2

Record of Oral Hearing
Held: May 17, 2022

Before SUSAN L. C. MITCHELL, CHRISTOPHER G. PAULRAJ, and
JOHN E. SCHNEIDER, *Administrative Patent Judges*.

IPR2021-00491
Patent 8,197,807 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF PATENT OWNER:

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The above-entitled matter came on for hearing on Tuesday, May 17, 2022, commencing at 10:01 a.m., EDT, by video/by telephone.

P R O C E E D I N G S

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2 JUDGE SCHNEIDER: Good morning everyone. We're
3 here this morning for the hearing in IPR 2021-00491 which is
4 Thorne Research, Inc. v. Trustees of Dartmouth College. The
5 patent at issue is U.S. 8,197,807 and today we have -- who do we
6 have appearing for Petitioner today?

7 MR. ROSATO: Good morning, Your Honor. My name is
8 Michael Rosato for Petitioner and I have with me Tasha Thomas
9 who is under the LEAP program.

10 JUDGE SCHNEIDER: All right. Welcome, Ms. Thomas.
11 And for Patent Owner, who do we have?

12 MR. ABRAMIC: Good morning, Your Honor. This is John
13 Abramic on behalf of Patent Owner.

14 JUDGE SCHNEIDER: All right. Very good. Because of
15 the presence of a LEAP practitioner, Petitioner, you will have
16 one hour to present your argument. Do you wish to reserve any
17 time for rebuttal?

18 MR. ROSATO: I'd like to reserve 15 minutes, Your
19 Honor.

20 JUDGE SCHNEIDER: And Patent Owner, you will have 45
21 minutes as was stated in the original order. Do you wish to
22 reserve any time for rebuttal?

23 MR. ABRAMIC: Five minutes, Your Honor.

1 JUDGE SCHNEIDER: All right. Thank you very much.
2 Before we begin a few ground rules. Please mute yourselves
3 when you're not speaking. I see that several of you have
4 headsets, I appreciate that. I'm hearing impaired so having the
5 headset helps me hear you a little bit better but I may have to
6 stop and ask you for pronunciations as we go forward. I'd ask
7 you to please identify yourself when you first start speaking for
8 the court reporter to help identify who's speaking here. For the
9 panel today we have myself, Judge Schneider, we have Judge
10 Mitchell and Judge Paulraj on the panel today. Before we begin
11 are there any questions?

12 MR. ROSATO: Not a question, Your Honor, but a
13 comment. I've had mixed (indiscernible) success with the
14 computer audio if it's not working for you, I'm happy to pause
15 and take time out of my argument time to connect by telephone.
16 Just please let me know and I'm happy to do that.

17 JUDGE SCHNEIDER: No problem. We'll try to keep track
18 and let you know if we can't hear you or understand you and
19 we'll adjust the time as necessary to allow for reconnection. We
20 understand the issues. With that, Petitioner, you may begin.

21 MR. ROSATO: Thank you, Your Honor, and may it please
22 the Board. We're going to address the argument in two parts.
23 I'll start by first addressing the legal standard for disqualifying
24 prior art as not being "by another" and that standard in view of
25 through the undisputed facts and procedural history here and I'll

1 turn things over to my colleague, Ms. Thomas, who will address
2 the issues of corroboration and insufficient corroboration in a
3 priority claim at issue here.

4 With that outline in mind, we'll get started by turning to
5 slide 2 of Petitioner's demonstrative exhibits and this lays out for
6 reference the grounds of challenge here. Ground 1 as we know is
7 based on the Bieganowski reference, Exhibit 1008, which is
8 referred to in the briefing as the Cell article. We may use that
9 terminology here. Ground 2 is based on the Brenner reference in
10 Exhibit 1007 which has been referred to as the '337 PCT. We
11 may use that terminology here.

12 JUDGE SCHNEIDER: So counsel, just for clarity these are
13 the only three references that are at issue presently. You're not
14 relying on Goldberger or Goldberger and Tanner or Stamler or
15 any of the other references that have been involved in the other
16 IPRs; is that correct?

17 MR. ROSATO: The references you mentioned are not
18 formally relied on. Of course, you know, we'll observe the
19 requirement under the case law of background art and some of
20 the issues we will talk about here is in response to efforts to, and
21 this is one of the issues I'm going to go into, is efforts to
22 disqualify a reference if there's, you know, responsive argument
23 to that. Some of the things they're trying to disqualify are things
24 and subject matter that was already in the public domain so to
25 the extent --

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