

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON ATHLETICA CANADA INC.
and LULULEMON USA INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2023-00438
Patent 8,620,413 B2

Before JOSIAH C. COCKS, GEORGE R. HOSKINS, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

ORDER
Conditionally Granting Patent Owner's Motion for
Pro Hac Vice Admission of Jonathan M. Swisher
37 C.F.R. § 42.10

On September 5, 2023, Patent Owner filed a motion requesting *pro hac vice* admission of Jonathan M. Swisher. Paper 18 (“Motion” or “Mot.”). Patent Owner also submitted a Declaration from Mr. Swisher in support of the Motion. Ex. 2007 (“Decl.”). Patent Owner attests that Petitioner does not oppose the Motion (Mot. 1), and Petitioner has not indicated any opposition.

For the reasons provided below, Patent Owner’s Motion is conditionally *granted*.

In accordance with 37 C.F.R. § 42.10(c), the Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause, subject to the condition that lead counsel be a registered practitioner. In authorizing a motion for *pro hac vice* admission, the Board requires the moving party to provide a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* and an affidavit or declaration of the individual seeking to appear in the proceeding. *See Unified Patents, Inc. v. Parallel Iron, LLC*, IPR2013-00639 (PTAB Oct. 15, 2013) (Paper 7) (representative “Order – Authorizing Motion for *Pro Hac Vice* Admission”).

Based on the facts set forth in the Motion and the accompanying Declaration, we conclude that Mr. Swisher has sufficient legal and technical qualifications to represent Patent Owner in this proceeding, has demonstrated sufficient litigation experience and familiarity with the subject matter of this proceeding, and meets all other requirements for admission *pro hac vice*. *See Decl.* Accordingly, Patent Owner has established good cause for *pro hac vice* admission of Mr. Swisher. Mr. Swisher will be permitted to serve as back-up counsel only. *See* 37 C.F.R. § 42.10(c).

We note that Patent Owner has not filed a Power of Attorney, or Mandatory Notices, including Mr. Swisher.

In consideration of the foregoing, it is hereby

ORDERED that Patent Owner's Motion for *pro hac vice* admission of Jonathan M. Swisher is conditionally *granted*;

FURTHER ORDERED that Patent Owner is to continue to have a registered practitioner represent it as lead counsel for this proceeding;

FURTHER ORDERED that Mr. Swisher is authorized to represent Patent Owner as back-up counsel only in this proceeding;

FURTHER ORDERED that Mr. Swisher comply with the Patent Trial and Appeal Board Consolidated Trial Practice Guide¹ (84 Fed. Reg. 64,280 (Nov. 21, 2019)), and the Board's Rules of Practice for Trials, as set forth in Part 42 of Title 37, Code of Federal Regulations;

FURTHER ORDERED that Mr. Swisher is subject to the Office's disciplinary jurisdiction under 37 C.F.R. § 11.19(a), and the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et. seq.*;

FURTHER ORDERED that Patent Owner file updated mandatory notices identifying Mr. Swisher as back-up counsel in accordance with 37 C.F.R. § 42.8(b)(3); and

FURTHER ORDERED that this Order is effective as of September 27th, 2023, but Patent Owner shall file, within ten business days, a Power of Attorney for Mr. Swisher, for this Order to remain effective.

¹ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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