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Paper No. 13
Date: December 19, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, INC. d/b/a ASSAULT FITNESS,
Petitioner,

v.

WOODWAY USA, INC.,
Patent Owner.

IPR2023-00836 (Patent 9,039,580 B1)
IPR2023-00843 (Patent 10,561,884 B2)
IPR2023-00849 (Patent 10,799,745 B2)[1]

Before MEREDITH C. PETRAVICK, NEIL T. POWELL, and AMEE A. SHAH, *Administrative Patent Judges.*

PETRAVICK, *Administrative Patent Judge*.

ORDER
Conditionally Granting Patent Owner's Motions for *Pro Hac Vice*
Admission of Kadie M. Jelenchick and Sarah E. Rieger
37 C.F.R. § 42.10

[1] This Order addresses issues that are the same in each of these proceedings. We issue one Order to be entered in each proceeding. The parties are not authorized to use this style caption unless later permitted.

On December 5, 2023, Patent Owner filed Motions for *Pro Hac Vice* Admission of Kadie M. Jelenchick and Sarah E. Rieger in the above-identified proceedings. Papers 10, 11.[2] The Motions are supported by Declarations of Ms. Jelenchick and Ms. Rieger. Exs. 2016, 2017. Patent Owner indicates that Petitioner does not oppose the Motions. Paper 10, 2; Paper 11, 2.

"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 and to any other conditions as the Board may impose." 37 C.F.R. § 42.10(c). For example, a motion for *pro hac vice* admission may be granted "upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding." *Id.*

Upon review of the record before us, we determine that the requirements of 37 C.F.R. § 42.10 have been met and there is good cause to admit Ms. Jelenchick and Ms. Rieger *pro hac vice* in the above-identified proceedings. In particular, Ms. Jelenchick states that she is "an experienced patent litigation attorney with more than 18 years of experience representing clients in patent cases," and is "the lead attorney for the trial team" in the related district court litigation involving the patents at issue in these proceedings. Ex. 2016 ¶¶ 11, 12. Ms. Rieger states that she is "an experienced patent litigation attorney with more than 6 years of experience representing clients in patent cases," and has "an established familiarity with

[2] For expediency, we cite to papers in IPR2023-00836. Similar papers were filed in IPR2023-00843 and IPR2023-00849.

the subject matter at issue" in these proceedings and has "been assisting lead counsel since the outset." Ex. 2017 ¶¶ 11, 12.

Our rules provide, however, that "[a] power of attorney must be filed with the designation of counsel." 37 C.F.R. § 42.10(b). While Patent Owner "should not file an additional power of attorney if the designated counsel is already counsel of record in the subject patent" (*id.*), this does not obviate the need to file a power of attorney for non-registered attorneys admitted *pro hac vice* in post-grant proceedings. *See, e.g.*, 37 C.F.R. 1.32(c) ("A power of attorney may only name as representative: . . . (2) Those *registered* patent practitioners associated with a Customer Number." (emphasis added)). Accordingly, Ms. Jelenchick and Ms. Rieger's admission in these proceedings will not be effective until the filing of a Power of Attorney designating Ms. Jelenchick and Ms. Rieger in each proceeding.

In addition, we note that while Patent Owner's Mandatory Notices identify Ms. Jelenchick, they do not identify Ms. Rieger. *See* Paper 4, 1. Patent Owner is reminded that "counsel must be identified" in updated Mandatory Notices "within 21 days of a change" in each proceeding. 37 C.F.R. § 42.8(a)(3), (b)(3).

It is, therefore,

ORDERED that Patent Owner's Motions for *Pro Hac Vice* Admission of Kadie M. Jelenchick and Sarah E. Rieger are conditionally granted, effective upon the filing of a Power of Attorney in each of the above-identified proceedings designating Ms. Jelenshick and Ms. Rieger;

Ms. Jelenchick and Ms. Rieger are authorized to act only as back-up counsel in the above-identified proceedings;

FURTHER ORDERED that Patent Owner is to continue to have a registered practitioner represent it as lead counsel in the above-identified proceedings;

FURTHER ORDERED that Ms. Jelenchick and Ms. Rieger are to comply with the Consolidated Trial Practice Guide[3] (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; and

FURTHER ORDERED that Ms. Jelenchick and Ms. Rieger are to be 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.*[4]

[3] Available at https://www.uspto.gov/TrialPracticeGuideConsolidated.

[4] Ms. Jelenchick and Ms. Rieger each state that they "will be subject to the USPTO Code of Professional Responsibility" (Ex. 2016 ¶ 8; Ex. 2017 ¶ 8), rather than the USPTO *Rules of Professional Conduct*. We deem this to be harmless error.

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