

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PELOTON INTERACTIVE, INC.,
Petitioner,

v.

NEC CORPORATION,
Patent Owner.

IPR2023-01240
IPR2023-01241¹
Patent 9,769,427 B2

Before MICHAEL J. STRAUSS, CHARLES J. BOUDREAU, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

ORDER
Conditionally Granting Petitioner's Motions for
Pro Hac Vice Admission of Emily M. Mondry
37 C.F.R. § 42.10(c)

¹ This order addresses substantively identical motions filed in each of the above-captioned proceedings. The parties are not authorized to use this caption without the Board's approval.

Petitioner filed motions for *pro hac vice* admission of Emily M. Mondry (Paper 33²) in each of the above-captioned proceedings. Petitioner also submitted declarations of Emily M. Mondry (Ex. 1018) in support of each motion. Petitioner states that Patent Owner does not oppose the motions. Paper 33, 1. For the reasons provided below, Petitioner's motions are *conditionally granted*.

Under 37 C.F.R. § 42.10(c), the Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause, so long as lead counsel is 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, Paper 7 (PTAB Oct. 15, 2013) (representative “Order – Authorizing Motion for *Pro Hac Vice* Admission”).

Based on the facts set forth in the motions and the accompanying declarations, Petitioner has established good cause for *pro hac vice* admission of Ms. Mondry. *See* Ex. 1018 ¶¶ 2–7, 9, 10. Ms. Mondry will be permitted to serve as back-up counsel only. *See* 37 C.F.R. § 42.10(c).

We note that Petitioner did not file a power of attorney under 37 C.F.R. § 42.10(b) that includes Ms. Mondry. Petitioner has also not filed

² This order cites to papers and exhibits filed in IPR2023-01240. Petitioner filed corresponding items in IPR2023-01241.

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mandatory notices under 37 C.F.R. § 42.8(b)(3) identifying Ms. Mondry as back-up counsel.

Accordingly, it is

ORDERED that Petitioner's motions for *pro hac vice* admission of Emily M. Mondry are *conditionally granted* in each of the above-captioned proceedings, provided that within ten business days of the date of this order, Petitioner submits powers of attorney under 37 C.F.R. § 42.10(b) in each proceeding for Ms. Mondry;

FURTHER ORDERED that Petitioner must file updated mandatory notices under 37 C.F.R. § 42.8(b)(3) in each proceeding identifying Ms. Mondry as back-up counsel;

FURTHER ORDERED that Petitioner must continue to have a registered practitioner represent it as lead counsel in these proceedings;

FURTHER ORDERED that Ms. Mondry is authorized to act only as back-up counsel in these proceedings;

FURTHER ORDERED that Ms. Mondry must comply with 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. Mondry 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.*

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