

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON USA INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2023-01460
Patent 9,730,484 B2

Before JOSIAH C. COCKS, CARL M. DEFRANCO, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

ORDER

Conditionally Granting Petitioner's Motion for *Pro Hac Vice*
Admission of Brandon G. Smith
37 C.F.R. § 42.10

On April 26, 2024, Petitioner filed a Motion for *Pro Hac Vice* Admission of Brandon G. Smith. Paper 12. The Motion is supported by the Declaration of Mr. Smith. Ex. 1021. Petitioner indicates that Patent Owner does not oppose the Motion. Paper 12, 1.

Pursuant to 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 its notice authorizing motions for *pro hac vice* admission, the Board requires 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 this proceeding. *See* Paper 3, 2 (citing *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 Motion and the accompanying Declaration, we conclude that Mr. Smith has sufficient legal and technical qualifications to represent Petitioner in this proceeding, that he has demonstrated sufficient familiarity with the subject matter of this proceeding, that he meets all other requirements for admission *pro hac vice*, and that Petitioner’s intent to be represented by counsel with litigation experience is warranted. Accordingly, Petitioner has established good cause for *pro hac vice* admission of Mr. Smith, who will be permitted to serve only as back-up counsel. *See* 37 C.F.R. § 42.10(c).

We note, however, that Petitioner has not filed Powers of Attorney including Mr. Smith in accordance with 37 C.F.R. § 42.10(b) and updated Mandatory Notices identifying Mr. Smith as back-up counsel in accordance with 37 C.F.R. § 42.8(b)(3). In view thereof, Petitioner’s Motion is

conditionally granted, effective after Petitioner files the aforementioned Powers of Attorney and Mandatory Notices.

It is, therefore,

ORDERED that Petitioner's Motion for *Pro Hac Vice* Admission of Brandon G. Smith is *conditionally granted* (Mr. Smith is authorized to act only as back-up counsel);

FURTHER ORDERED that within ten (10) business days of the date of this Order, Petitioner shall file a Power of Attorney including Mr. Smith in accordance with 37 C.F.R. § 42.10(b);

FURTHER ORDERED that within ten (10) business days of the date of this Order, Petitioner shall file updated Mandatory Notices in accordance with 37 C.F.R. § 42.8(b)(3) listing Mr. Smith as back-up counsel;

FURTHER ORDERED that Petitioner is to continue to have a registered practitioner represent it as lead counsel;

FURTHER ORDERED that Mr. Smith is to comply with the 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; and

FURTHER ORDERED that Mr. Smith is 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.*

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

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