

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECORE FITNESS, LLC
d/b/a ASSAULT FITNESS,
Petitioner,

v.

WOODWAY USA, INC.,
Patent Owner.

IPR2024-00083
Patent 11,465,005 B2

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

On May 31, 2024, Patent Owner filed Motions for *Pro Hac Vice* Admission of Kadie M. Jelenchick and Sarah E. Rieger in the above-identified proceeding. Papers 16, 17. 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 16, 2; Paper 17, 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 proceeding. 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 patent at issue in this proceeding. 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 the subject matter at issue” in this proceeding and has “been assisting lead counsel since the outset of the proceeding.” 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 this proceeding will not be effective until the filing of a Power of Attorney designating Ms. Jelenchick and Ms. Rieger in this proceeding.

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

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

FURTHER ORDERED that Ms. Jelenchick and Ms. Rieger are 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

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

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.*²

² 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.

IPR2024-00083
Patent 11,465,005 B2

FOR PETITIONER:

Andrew Turner
John Halan
Rebecca Cantor
Kyle Konz
BROOKS KUSHMAN P.C.
aturner@brookskushman.com
jhalan@brookskushman.com
rcantor@brookskushman.com
kkonz@brookskushman.com

FOR PATENT OWNER:

Richard McKenna
Kadie Jelenchick
Sarah Rieger
FOLEY & LARDNER LLP
rmckenna@foley.com
kjelenchick@foley.com
srieger@foley.com