

Filed October 9, 2024

On behalf of **lululemon usa inc.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON USA INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

Case IPR2024-00460
Patent 8,266,749

UNOPPOSED MOTION FOR BRANDON G. SMITH TO APPEAR *PRO HAC VICE* ON BEHALF OF PETITIONER LULULEMON USA INC.

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Pursuant to the Board's February 12, 2024 Notice of Filing Date Accorded (Paper 5) and 37 C.F.R. §§ 42.10(c) and 42.22, Petitioner lululemon usa inc. ("lululemon") hereby moves for an Order allowing Brandon G. Smith of Knobbe, Martens, Olson & Bear, LLP to appear *pro hac vice* on behalf of lululemon in the above-captioned case. lululemon has conferred with counsel for Patent Owner Nike, Inc. ("Nike"), and Nike's counsel indicated that Nike does not oppose lululemon's motion to allow Mr. Smith to appear *pro hac vice* in this matter.

II. LIST OF EXHIBITS RELIED UPON FOR THIS MOTION

lululemon Exhibit 1024 - Declaration of Brandon G. Smith in Support of Motion to Appear *Pro Hac Vice* on Behalf of Petitioner lululemon usa inc.

III. REASONS THE REQUESTED RELIEF SHOULD BE GRANTED

As set forth below in the Statement of Material Facts, lululemon has made all of the showings required under 37 C.F.R. § 42.10(c) for recognizing Mr. Smith *pro hac vice*. In particular, Mr. Smith is an experienced litigation attorney who has represented clients in numerous patent litigation cases in various United States District Courts and the Court of Appeals for the Federal Circuit, including technically and legally complex matters such as will be present in this proceeding. Accordingly, allowing Mr. Smith to appear *pro hac vice* on behalf of lululemon is appropriate in this proceeding.

IV. STATEMENT OF MATERIAL FACTS

1. 37 C.F.R. § 42.10(c) provides that “[t]he 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. For example, where the lead counsel is a registered practitioner, a motion to appear *pro hac vice* by counsel who is not a registered practitioner 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.”

2. Lead counsel for lululemon in this *inter partes* review proceeding is Ali S. Razai. Mr. Razai is registered to practice before the United States Patent and Trademark Office and holds Registration No. 60,771.

3. As set forth in lululemon Exhibit 1024 (the “Smith Declaration”), Mr. Smith is an experienced litigation attorney and has an established familiarity with the subject matter at issue in this proceeding. Smith Decl. ¶¶ 2-3. In particular, Mr. Smith has over 9 years of experience as a patent litigator and has represented clients in numerous patent litigation cases in various proceedings in United States District Courts and the Court of Appeals for the Federal Circuit. *Id.* ¶ 2.

4. Further, Mr. Smith is counsel for lululemon in the co-pending litigation involving the same patent at issue in this proceeding—U.S. 8,266,749 (“the ’749 patent”)—and has gained experience with the subject matter of that patent. *Id.* ¶ 3.

5. With regard to the ’749 patent, Mr. Smith is familiar with the ’749 patent, and with the legal subject matter, technical subject matter, and cited art discussed in the petition for *inter partes* review of the ’749 patent. *Id.* ¶ 3. In view of his legal experience, technical background, and familiarity with the issues in the present matter, Petitioner lululemon has requested his services in the present matter.

6. Mr. Smith has read and will comply with the Office Patent Trial Practice Guide and the Board’s Rules of Practice for Trials set forth in Part 42 of Title 37 of the Code of Federal Regulations. *Id.* ¶ 8. Mr. Smith also agrees to be subject to the United States Patent and Trademark Office Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.*, and disciplinary jurisdiction under 37 C.F.R. § 11.19(a). *Id.* ¶ 9.

7. Finally, Mr. Smith has attested to the remaining elements of Paragraph 2(b) of the representative “Order – Authorizing Motion for *Pro Hac Vice* Admission” in Case IPR2013-00639, Paper 7. *Id.* ¶¶ 3-10; *see* Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response (Paper 5) at 2.

V. CONCLUSION

In view of the foregoing and having satisfied the requirements of 37 C.F.R. § 42.10(c), lululemon hereby moves for an Order allowing Brandon G. Smith of Knobbe, Martens, Olson & Bear, LLP, to appear *pro hac vice* on behalf of lululemon in the above-captioned case.

Respectfully submitted,

Dated: October 9, 2024

/Ali S. Razai/

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Customer No. 20,995

Attorneys for Petitioner

lululemon usa inc.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies service on the Petitioner, pursuant to 37 C.F.R. § 42.6(e) and by agreement of counsel, by electronic (e-mail) delivery of a true copy of the foregoing **UNOPPOSED MOTION FOR BRANDON G. SMITH TO APPEAR *PRO HAC VICE* ON BEHALF OF PETITIONER LULULEMON USA INC.** was served on October 9, 2024 to the following Counsel for Patent Owner via email:

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Dated: October 9, 2024

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