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Paper 12
Entered: October 15, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LULULEMON USA INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2024-00460
Patent 8,266,749 B2

Before KEN B. BARRETT, JOSIAH C. COCKS, and SCOTT A. DANIELS, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

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

Petitioner filed a motion requesting *pro hac vice* admission of Brandon G. Smith in the above-identified proceeding ("Motion"). Paper 11. Petitioner also submitted a Declaration from Mr. Smith in support of the Motion ("Declaration"). Ex. 1024. Petitioner states that Patent Owner does not oppose the Motion. Mot. 1.

For the reasons provided below, the Motion is *granted*.

In accordance with 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 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 (PTAB Oct. 15, 2013) (Paper 7) (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).

Upon review of the record before us, we note that a Power of Attorney in accordance with 37 C.F.R. § 42.10(b) has not been submitted for Mr.

Smith. Therefore, Petitioner's Motion is *conditionally granted*, and is to be effective after Petitioner files the aforementioned Power of Attorney.

In addition, Petitioner has not filed updated Mandatory Notices identifying Mr. Smith as back-up counsel. Therefore, Petitioner must file updated Mandatory Notices identifying Mr. Smith as back-up counsel in accordance with 37 C.F.R. § 42.8(b)(3).

In consideration of the foregoing, it is hereby

ORDERED that Petitioner's Motion for *pro hac vice* admission of Brandon G. Smith is *conditionally granted*, provided that within ten (10) business days of the date of this order, Petitioner submits a Power of Attorney for Brandon G. Smith in accordance with 37 C.F.R. § 42.10(b);

FURTHER ORDERED that Petitioner must file an updated Mandatory Notice identifying Mr. Smith as back-up counsel in accordance with 37 C.F.R. § 42.8(b)(3);

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

FURTHER ORDERED that Mr. Smith is authorized to represent Petitioner as back-up counsel only in the above-identified proceeding;

FURTHER ORDERED that Mr. Smith be familiar with the Patent Trial and Appeal Board Consolidated Trial Practice Guide[1] (84 Fed. Reg. 64,280 (Nov. 21, 2019)), and 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 Mr. Smith is subject to the Office's disciplinary jurisdiction under 37 C.F.R. § 11.19(a), and the USPTO Rules

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

of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et. seq*.

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