

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIOFRONTERA INC., BIOFRONTERA BIOSCIENCE GMBH,
BIOFRONTERA PHARMA GMBH, and BIOFRONTERA AG,
Petitioner,

v.

SUN PHARMACEUTICAL INDUSTRIES, INC.,
Patent Owner.

IPR2024-01312
Patent 11,697,028 B2

Before MITCHELL G. WEATHERLY, ZHENYU YANG, and
MARY C. HOFFMAN, *Administrative Patent Judges*.

HOFFMAN, *Administrative Patent Judge*.

ORDER

Conditionally Granting Patent Owner's Motion for *Pro Hac Vice* Admission
of Raymond Habbaz and Petitioner's Motions for *Pro Hac Vice* Admission
of Brian Larivee and Chad Landmon
37 C.F.R. § 42.10

Patent Owner filed a motion requesting *pro hac vice* admission of Raymond Habbaz. Paper 18 (“PO Motion”). Patent Owner submitted a Declaration from Raymond Habbaz (Ex. 2086) in support of the PO Motion. Patent Owner represents that Petitioner does not oppose the PO Motion. Paper 18, 1.

Petitioner filed motions requesting *pro hac vice* admission of Brian Larivee and Chad Landmon. Papers 19, 20 (collectively “Pet. Motions”). Petitioner filed Declarations from Brian Larivee (Ex. 1024) and Chad Landmon (Ex. 1025) in support of the Pet. Motions. Petitioner represents that Patent Owner does not oppose the Pet. Motions. Paper 19, 2; Paper 20, 2.

For the reasons provided below, the PO Motion and the Pet. Motions are *conditionally granted*.

In accordance with 37 C.F.R. § 42.10(c)(1), 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* 37 C.F.R. § 42.10(c)(1); *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 PO Motion, Pet. Motions, and the accompanying declarations, we conclude that Mr. Habbaz has sufficient qualifications to represent Patent Owner in this proceeding; Mr. Larivee and

Mr. Landmon each have sufficient qualifications to represent Petitioner in this proceeding; Mr. Habbaz, Mr. Larivee, and Mr. Landmon have each demonstrated sufficient litigation experience and legal familiarity with the subject matter of this proceeding; and Mr. Habbaz, Mr. Larivee, and Mr. Landmon meet all other requirements for admission *pro hac vice*. See Exs. 1024, 1025, 2086. Accordingly, Patent Owner has established good cause for *pro hac vice* admission of Mr. Habbaz, and Petitioner has established good cause for *pro hac vice* admission of Mr. Larivee and Mr. Landmon. Mr. Habbaz, Mr. Larivee, and Mr. Landmon will be permitted to serve as back-up counsel only. See 37 C.F.R. § 42.10(c)(1).

Upon review of the record before us, we note that Powers of Attorney in accordance with 37 C.F.R. § 42.10(b) have not been submitted for Mr. Habbaz, Mr. Larivee, or Mr. Landmon. In view of this, and for the reasons set forth below, the PO Motion and Pet. Motions are *conditionally granted*. Mr. Habbaz's *pro hac vice* admission will become effective upon filing by Patent Owner of a Power of Attorney appointing Mr. Habbaz as back-up counsel. Mr. Larivee's and Mr. Landmon's *pro hac vice* admission will become effective upon filing by Petitioner of a Power of Attorney appointing Mr. Larivee and Mr. Landmon as back-up counsel.

Patent Owner has not filed updated mandatory notices identifying Mr. Habbaz as back-up attorney, and Petitioner has not filed updated mandatory notices identifying Mr. Larivee and Mr. Landmon as back-up attorneys. Therefore, Patent Owner must also file an updated mandatory notice identifying Mr. Habbaz as back-up counsel, and Petitioner must file an updated mandatory notice identifying Mr. Larivee and Mr. Landmon 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 Patent Owner's Motion for *pro hac vice* admission of Raymond Habbaz and Petitioner's Motions for *pro hac vice* admission of Brian Larivee and Chad Landmon are *conditionally granted*;

FURTHER ORDERED that Mr. Habbaz's admission as back-up counsel will become effective upon filing by Patent Owner of a Power of Attorney appointing Mr. Habbaz as back-up counsel in accordance with 37 C.F.R. § 42.10(b);

FURTHER ORDERED that Mr. Larivee's and Mr. Landmon's admission as back-up counsel will become effective upon filing by Petitioner of a Power of Attorney appointing Mr. Larivee and Mr. Landmon as back-up counsel in accordance with 37 C.F.R. § 42.10(b);

FURTHER ORDERED that Patent Owner must file promptly updated mandatory notices identifying Mr. Habbaz as back-up counsel in accordance with 37 C.F.R. § 42.8(b)(3);

FURTHER ORDERED that Petitioner Owner must file promptly updated mandatory notices identifying Mr. Larivee and Mr. Landmon as back-up counsel in accordance with 37 C.F.R. § 42.8(b)(3);

FURTHER ORDERED that Patent Owner and Petitioner are to continue to have registered practitioners represent them as lead counsel in this proceeding;

FURTHER ORDERED that Mr. Habbaz is authorized to represent Patent Owner as back-up counsel only in this proceeding and Mr. Larivee and Mr. Landmon are authorized to represent Petitioner as back-up counsel only in this proceeding;

FURTHER ORDERED that Mr. Habbaz, Mr. Larivee, and Mr. Landmon be familiar with the Patent Trial and Appeal Board Consolidated Trial Practice Guide¹ (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. Habbaz, Mr. Larivee, and Mr. Landmon are 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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