

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THERABODY, INC.,
Petitioner,

v.

HYPERICE IP SUBCO, LLC,
Patent Owner.

PGR2024-00053
Patent 11,857,482 B1

Before JEFFREY N. FREDMAN, RICHARD H. MARSCHALL, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

ORDER
Conditionally Granting Petitioner's Motion for
Pro Hac Vice Admission of Bradley M. Berg
37 C.F.R. § 42.10

Petitioner filed a motion requesting *pro hac vice* admission of Bradley M. Berg in the above-identified proceeding (“Motion”). Paper 14. Petitioner also submitted a Declaration from Mr. Berg in support of the Motion (“Declaration”). Ex. 1015. Patent Owner did not oppose the Motion within the requisite time period.

For the reasons provided below, the Motion is *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 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. Berg 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 otherwise 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. Berg, who will be permitted to serve only as back-up counsel. *See* 37 C.F.R. § 42.10(c)(1).

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.

Berg. 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. Berg as back-up counsel. Therefore, Petitioner must file an updated Mandatory Notice identifying Mr. Berg 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 Bradley M. Berg is *conditionally granted*, provided that within ten (10) business days of the date of this order, Petitioner submits a Power of Attorney for Bradley M. Berg in accordance with 37 C.F.R. § 42.10(b);

FURTHER ORDERED that Petitioner must file an updated Mandatory Notice identifying Mr. Berg 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. Berg is authorized to represent Petitioner as back-up counsel only in the above-identified proceeding;

FURTHER ORDERED that Mr. Berg 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. Berg 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>.

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

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FOR PETITIONER:

Marc J. Pensabene
Cameron W. Westin
O'MELVENY & MYERS LLP
mpensabene@omm.com
cwestin@omm.com

FOR PATENT OWNER:

Kyle W. Kellar
Siho Yoo
John H. Wright III
WOMBLE BOND DICKINSON (US) LLP
kyle.kellar@wbd-us.com
siho.yoo@wbd-us.com
john.wright@wbd-us.com

Mauricio Uribe
KNOBBE MARTENS OLSON & BEAR LLP
mauricio.uribe@knobbe.com

Lawrence LaPorte
LEWIS BRISBOIS BISGAARD and SMITH LLP
lawrence.laporte@lewisbrisbois.com