

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EBAY ENTERPRISE, INC. and EBAY, INC.

Petitioner

v.

LAWRENCE B. LOCKWOOD

Patent Owner

CASE NO: CBM2014-00026

Patent No. 5,576,951

**EBAY ENTERPRISE, INC. AND EBAY, INC.’S
UNOPPOSED MOTION FOR *PRO HAC VICE*
ADMISSION OF MARK P. WINE**

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.10(c), Petitioner, eBay Enterprise, Inc. and eBay, Inc., (Collectively “eBay”) respectfully requests the *pro hac vice* admission of Mark P. Wine in this proceeding.

II. GOVERNING LAWS, RULES AND PRECEDENT

Section 42.10(c) states as follows:

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. 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.

The Board’s Notice of Filing Date Accorded to Petition, Paper No. 9 in this proceeding (“Filing Date Notice”), states that motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c) must be filed in accordance with the “Order – Authorizing Motion for *Pro Hac Vice* Admission” entered in Case IPR2013-00639, Paper No. 7 (MPT)” (“*Pro Hac Vice* Order”). Filing Date Notice, Paper No. 7, at 2. In accordance with the *Pro Hac Vice* Order, this motion is being

filed no sooner than twenty-one (21) days after service of the petition. *Pro Hac Vice* Order, at 2. The Filing Date Notice authorizes the parties to file motions for *pro hac vice* admission in this proceeding. Filing Date Notice, Paper No. 9, at 2.

The *Pro Hac Vice* Order requires that such motions (a) “[c]ontain a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* during the proceeding,” and (b) “[b]e accompanied by an affidavit or declaration of the individual seeking to appear attesting to the following:

- i. Membership in good standing of the Bar of at least one State or the District of Columbia;
- ii. No suspensions or disbarments from practice before any court or administrative body;
- iii. No application for admission to practice before any court or administrative body ever denied;
- iv. No sanctions or contempt citations imposed by any court or administrative body;
- v. The individual seeking to appear 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 37 C.F.R.;

- vi. The individual will be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 10.20 et seq. and disciplinary jurisdiction under 37 C.F.R. § 11.19(a);
- vii. All other proceedings before the Office for which the individual has applied to appear *pro hac vice* in the last three (3) years; and
- viii. Familiarity with the subject matter at issue in the proceeding.” *Pro Hac Vice* Order, at 3-4.

III. STATEMENT OF FACTS

Based on the following facts, and supported by the Affidavit of Mark P. Wine (Ex. eBay 1015) (“Wine Affidavit”) submitted herewith, Petitioner eBay requests the *pro hac vice* admission of Mark P. Wine in this proceeding.

1. eBay’s lead counsel, Don Daybell, is a registered practitioner (Reg. No. 50,877).
2. Mr. Wine is a partner at the law firm of Orrick Herrington & Sutcliffe LLP. (Ex. eBay 1015, ¶ 3)
3. Mr. Wine is an experienced litigating attorney and has been a litigating attorney for more than thirty-nine years. (*Id.*, ¶ 3). Mr. Wine has been litigating patent cases for over thirty years. (*Id.*, ¶ 4).
4. Mr. Wine has established familiarity with the subject matter at issue in this proceeding. (*Id.*, ¶ 5). Mr. Wine has litigated cases in area of

electronic commerce. He has become familiar with U.S. Patent No. 5,576,951 (the “’951 Patent”) and with its prosecution history. (*Id.*) He also has in-depth familiarity with Lockwood’s related U.S. Patent No. 7,010,508 (the “’508 Patent”) and its file history. (*Id.*)

5. Mr. Wine was counsel for eBay in a co-pending district court litigation against eBay Enterprise, Inc. That litigation is captioned *Landmark Technology, LLC v. iRobot Corporation*, Civil Action No. 6:13-cv-0411 (E.D. Tex.) and involved the ’508 and ’951 patents also at issue in these covered business method review proceedings. As counsel for eBay, he had been actively involved in all aspects of its district court litigation. (*Id.*, ¶ 6)
6. Mr. Wine is a member in good standing of the State Bar of California. (*Id.*, ¶ 7).
7. Mr. Wine has never been suspended or disbarred from practice before any court or administrative body. (*Id.*, ¶ 8).
8. Mr. Wine was once administratively suspended by the Minnesota Supreme Court for failure to pay annual registration dues. (*Id.*) However, as further explained in the Affidavit of Mark P. Wine, this administrative suspension occurred without Mr. Wine’s knowledge,

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