

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STARBUCKS CORPORATION,
Petitioner,

v.

AMERANTH, INC.,
Patent Owner.

Case CBM2015-00091
Patent 6,384,850 B1

**PETITIONER'S MOTION FOR *PRO HAC VICE* ADMISSION
UNDER 37 C.F.R. §42.10(c)**

Petitioner Starbucks Corporation (collectively "Petitioner") respectfully requests that the Board admit Matthew C. Bernstein as backup counsel *pro hac vice* in this proceeding. Petitioner is also (under a separate motion) requesting the same in PTAB Case No. CBM2015-00099 regarding related U.S. Patent No. 6,871,325. Mr. Bernstein is the litigation counsel for Starbucks Corporation in the district court litigation involving both U.S. Patent Nos. 6,384,850 and 6,871,325 and has substantial knowledge in the substantive issues of the invalidity of the challenged claims of the '850 Patent in this proceeding. Therefore, Mr. Bernstein meets the requirements of "an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding" under 37 C.F.R. §42.10(c).

1. Time For Filing

This Motion for *Pro Hac Vice* Admission has been authorized by the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response that was mailed on March 18, 2015 (Paper 3). This Motion is filed no sooner than twenty one (21) days after service of the petition.

2. Statement of Facts

In this proceeding, lead counsel for Petitioner is Bing Ai, a registered practitioner. The following statement of facts shows that there is good cause for the Board to admit Mr. Bernstein *pro hac vice*.

Mr. Bernstein is a patent litigation attorney with more than 16 years of experience representing clients in cases involving computer hardware and software, semiconductors, Internet and e-commerce, hand held computers and other mobile devices. (Affidavit of Matthew C. Bernstein (“Bernstein Affidavit”), ¶ 8 in Exhibit 1052.)

Mr. Bernstein regularly litigates patent cases in various forums including the United States Court of Appeals for the Federal Circuit, various federal district courts, and the International Trade Commission (*Id.*) He has experience representing clients in many phases of litigation including discovery, Markman hearings, jury trials, and appeals. (*Id.*) Mr. Bernstein's biography is attached to the Bernstein Affidavit (Exhibit 1052) as Exhibit A.

U.S. Patent Nos. 6,384,850 and 6,871,325, among other patents, are currently asserted against Petitioner in a co-pending litigation, *Ameranth, Inc. v. Starbucks Corp.*, Case No. 3-13-cv-01072 filed in the Southern District of California (“the co-pending litigation”). That litigation led to the *covered business*

method review proceedings under PTAB Case Nos. CBM2015-00091 and CBM2015-00099. (*Id.* at ¶ 9.)

Mr. Bernstein is lead counsel for Petitioner in the co-pending litigation and, as such, oversees and handles all phases of the litigation from discovery through trial. (*Id.* at ¶ 10.) Mr. Bernstein is familiar with the technologies and issued claims in Patent No. 6,384,850, prior art references and invalidity grounds based on the prior art. (*Id.*) Mr. Bernstein is also familiar with the prior art references cited in the related PTAB Case No. CBM2015-00099 and the associated invalidity grounds before the PTAB. (*Id.*)

Petitioner has invested significant financial resources in the related matter in which Mr. Bernstein serves as lead counsel. Petitioner therefore respectfully submits that there is good cause for the Board to recognize Mr. Bernstein as counsel *pro hac vice* during this proceeding.

3. Affidavit or Declaration of Individual Seeking to Appear

This Motion for *Pro Hac Vice* Admission is accompanied by an Affidavit of Mr. Bernstein (Exhibit 1052), which attests to the requirements for *pro hac vice* admission set forth in IPR2013-00639, Paper 7, dated Oct. 15, 2013.

4. Conclusion

Accordingly, Petitioner submits that there is good cause under 37 C.F.R. § 42.10(c) for the Board to admit Matthew C. Bernstein as counsel *pro hac vice* and to authorize Mr. Bernstein to represent Petitioner as back-up counsel in this proceeding.

Dated: May 14, 2015

Respectfully submitted,

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