

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GAIN CAPITAL HOLDINGS, INC.,  
Petitioner,

v.

OANDA CORPORATION,  
Patent Owner.

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CBM2020-00021 (Patent 8,392,311 B2)  
CBM2020-00022 (Patent 7,146,336 B2)  
CBM2020-00023 (Patent 7,496,534 B2)<sup>1</sup>

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Before SALLY C. MEDLEY, WILLIAM V. SAINDON, and  
JUSTIN T. ARBES, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

ORDER  
Granting Patent Owner's Motions for  
*Pro Hac Vice* Admission of Erik Dykema  
37 C.F.R. § 42.10(c)

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<sup>1</sup> This Order addresses the same issue for the above-identified cases. Therefore, we exercise our discretion to issue a single Order to be filed in each case. The parties are not authorized to use this style heading for any subsequent papers.

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In each of the instant proceedings, Patent Owner filed a motion requesting *pro hac vice* admission of Erik Dykema, along with a supporting declaration from Mr. Dykema.<sup>2</sup> Petitioner did not oppose the motions within the requisite time period. For the reasons stated below, Patent Owner’s motions are *granted*.

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.” 37 C.F.R. § 42.10(c). For example, where the lead counsel is a registered practitioner, a non-registered practitioner may be permitted to appear *pro hac vice* “upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.” *Id.* In authorizing motions 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. Paper 3, 2 (citing *Unified Patents, Inc. v. Parallel Iron, LLC*, IPR2013-00639, Paper 7 (PTAB Oct. 15, 2013) (“Order – Authorizing Motion for *Pro Hac Vice* Admission”)).

In the motions, Patent Owner asserts that there is good cause for *pro hac vice* admission because Mr. Dykema (1) is an experienced litigation attorney with experience in patent infringement litigation, and (2) has an

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<sup>2</sup> Patent Owner filed similar papers and exhibits in each of the instant proceedings. See CBM2020-00021, Paper 6 (“Mot.”), Ex. 2001; CBM2020-00022, Paper 6, Ex. 2001; CBM2020-00023, Paper 6, Ex. 2001. We refer to those filed in Case CBM2020-00021 for convenience.

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established familiarity with the subject matter at issue. *See* Mot. 3–4. Mr. Dykema attests to these facts in his declaration with sufficient explanations and further attests that he is counsel for Patent Owner in the district court case involving the challenged patents in these proceedings. *See* Ex. 2001.

Based on the facts set forth above, we conclude that Mr. Dykema has sufficient legal and technical qualifications to represent Patent Owner in these proceedings and that there is a need for Patent Owner to have its counsel in the related litigation involved in these proceedings. *See* IPR2013-00639, Paper 7 (setting forth the requirements for *pro hac vice* admission). Accordingly, Patent Owner has established good cause for the *pro hac vice* admission of Mr. Dykema. Mr. Dykema will be permitted to appear *pro hac vice* in the instant proceedings as back-up counsel only. *See* 37 C.F.R. § 42.10(c).

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner’s motions for *pro hac vice* admission of Mr. Dykema in the instant proceedings are granted, and Mr. Dykema is authorized to represent Patent Owner as back-up counsel only in the instant proceedings;

FURTHER ORDERED that Patent Owner is to continue to have a registered practitioner as lead counsel in the instant proceedings;

FURTHER ORDERED that Mr. Dykema shall comply with the Office Patent Trial Practice Guide, as updated by the Consolidated Trial Practice Guide (Nov. 2019), *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>, 84 Fed. Reg. 64,280 (Nov. 21, 2019), and

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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. Dykema is subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et. seq.* and the Office's disciplinary jurisdiction under 37 C.F.R. § 11.19(a).

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PETITIONER:

Michael T. Rosato  
Matthew A. Argenti  
Wesley E. Derryberry  
WILSON SONSINI GOODRICH & ROSATI  
mrosato@wsgr.com  
margenti@wsgr.com  
wderryberry@wsgr.com

PATENT OWNER:

Drew Koning  
KONING ZOLLAR LLP  
drew@kzllp.com