

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUVASIVE, INC.
Petitioner

v.

WARSAW ORTHOPEDIC, INC.
Patent Owner

Case IPR2013-00395
Patent No. 8,444,696

**MOTION FOR PRO HAC VICE ADMISSION
UNDER 37 C.F.R. § 42.10**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

The Patent Owner (“Warsaw”) respectfully requests that the Board recognize Mrs. Nimalka R. Wickramasekera as counsel *pro hac vice* during this proceeding. Warsaw seeks Mrs. Wickramasekera’s assistance because of her experience assisting Warsaw on patent-related matters and her experience on the substantive and technical issues involved in this proceeding. This motion is authorized by the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response mailed on July 1, 2013. *See* Notice, Paper 6 at 3.

1. Statement of Facts

Mrs. Wickramasekera is an experienced patent litigation attorney, with eight years of experience in discovery, *Markman* hearings, dispositive motions, and jury and bench trials in patent infringement matters. Mrs. Wickramasekera has litigated a number of biotechnology and medical device patent infringement matters and has a M.S. in Molecular, Cell & Developmental Biology. In prior litigation between the parties related to spinal technology, Mrs. Wickramasekera examined several witnesses in deposition and at trial. Additionally, Mrs. Wickramasekera has argued several motions in the parties’ co-pending litigation in the Southern District of California, was heavily involved in the parties’ claim construction proceedings in that case, and has significant familiarity with the prior art at issue in this proceeding. Mrs. Wickramasekera's biography, including a list of representative

cases, distinctions, publications, and professional activities, is attached as Exhibit A to Exhibit 2002.

U.S. Patent No. 8,444,696 (the “’696 patent”) is currently asserted against Petitioner NuVasive, Inc. in a co-pending litigation, Warsaw Orthopedic, Inc., et al. v. NuVasive, Inc., Case No. 3:12-cv-02738-CAB (MDD) (S.D. Cal.) (the “co-pending litigation”). U.S. Patent 8,444,696 was added to this co-pending litigation by an Order dated July 24, 2013. Mrs. Wickramasekera is counsel for Warsaw in the co-pending litigation and, as such, has an established familiarity with the subject matter at issue in this proceeding. Mrs. Wickramasekera is also counsel in the related matter of Medtronic v. NuVasive, Case No. 3:08-cv-01512-MMA-AJB (S.D. Cal.) (the “related litigation”). Accordingly, Patent Owner has expended significant financial resources in the co-pending and related litigations with Mrs. Wickramasekera as counsel, and Patent Owner wishes to continue using Mrs. Wickramasekera as counsel in this proceeding.

Therefore, there is good cause for the Board to recognize Mrs. Wickramasekera as counsel *pro hac vice* during this proceeding.

2. Affidavit or Declaration of Individual Seeking to Appear

This Motion for *Pro Hac Vice* Admission is accompanied by an Affidavit of Mrs. Nimalka R. Wickramasekera as required by the Order Authorizing Motion for *Pro Hac Vice* entered July 1, 2013. The Affidavit is submitted as Exhibit 2002.

Respectfully Submitted,

Dated: February 11, 2014



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Motion for *Pro Hac Vice* Admission and copy of the Affidavit of Mrs. Nimalka R. Wickramasekera in Support of Motion for *Pro Hac Vice* Admission was served in its entirety via electronic mail to APSI@fr.com (referencing Attorney Docket No. 13958-0113IP1; and cc'ing schaefer@fr.com and hawkins@fr.com):

Stephen R. Schaefer
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402

Michael T. Hawkins
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402

Date of Service: February 11, 2014

Signature: 
Thomas H. Martin, Reg. No. 34,383