

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NUVASIVE, INC.
Petitioner

v.

WARSAW ORTHOPEDIC, INC.
Patent Owner

Case IPR2013-00396
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 Mr. Luke L. Dauchot as counsel *pro hac vice* during this proceeding. Warsaw seeks Mr. Dauchot's assistance because of his experience assisting Warsaw on patent-related matters and his 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 4 at 3.

1. Statement of Facts

Mr. Dauchot is an experienced patent litigation attorney, with over 20 years of experience in discovery, jury and bench trials, *Markman* hearings, and appellate oral arguments in patent infringement matters. Mr. Dauchot is a member of the American Bar Association (Intellectual Property Law and Litigation Sections), American Intellectual Property Law Association, International Bar Association, Los Angeles Intellectual Property Law Association, and Judge Paul R. Michel Intellectual Property American Inn of Court (Executive Committee member). Mr. Dauchot's biography, including a list of representative cases, distinctions, publications, and professional activities, is attached as Exhibit A to Exhibit 2001.

Mr. Dauchot was granted *pro hac vice* admission by the Board in two separate proceedings related to U.S. Patent No. 8,251,997 (IPR2013-00206 and IPR2013-00208). Like the '997 patent in those proceedings, here 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”). The ’696 patent was added to this co-pending litigation by an Order dated July 24, 2013. Mr. Dauchot is lead counsel for Warsaw in the co-pending litigation and, as such, has an established familiarity with the subject matter at issue in this proceeding. Mr. Dauchot is also lead counsel in the related matter of Medtronic v. NuVasive, Case No. 3:08-cv-01512-MMA-AJB (S.D. Cal.) (the “related litigation”). In the related litigation, Mr. Dauchot deposed and examined at trial the declarant relied upon by Petitioner, who is also an author of multiple prior art references in the instituted grounds. Accordingly, Patent Owner has expended significant financial resources in the co-pending and related litigations with Mr. Dauchot as lead counsel, and Patent Owner wishes to continue using Mr. Dauchot as counsel in this proceeding.

Therefore, there is good cause for the Board to recognize Mr. Dauchot 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 Mr. Luke L. Dauchot as required by the Order Authorizing Motion for *Pro Hac Vice* entered July 1, 2013. The affidavit is submitted as Exhibit 2001.

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 Mr. Luke L. Dauchot 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. 13958-0113IP2; 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