

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX CORP.
Petitioner
v.
ALCON RESEARCH, LTD.
Patent Owner

CASE IPR2013-00428
U.S. Patent No. 8,268,299

**AFFIDAVIT IN SUPPORT OF MOTION FOR *PRO HAC VICE* ADMISSION
OF H. KEETO SABHARWAL UNDER 37 C.F.R. § 42.10(c)**

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Apotex 1018
Apotex v. Alcon
IPR2013-00428

1. I, H. Keeto Sabharwal, am more than twenty-one years of age, am competent to present this affidavit, and have personal knowledge of the facts set forth herein.

2. This affidavit is given in support of the Petitioner Apotex Corp.'s Motion for *Pro Hac Vice* Admission.

3. I am a director at the law firm of Sterne, Kessler, Goldstein and Fox P.L.L.C.

4. I have been a patent litigation attorney for nearly 20 years, and I've been litigating patent cases during that entire time period. I served as lead trial counsel in a large majority of these patent cases. Most of the patent cases in which I served as lead trial counsel involved pharmaceutical products. I have litigated at least 30 patent infringement actions involving a variety of pharmaceutical and life science matters.

5. I am a member in good standing of the State Bar of New York and the Bar of the District of Columbia. I have never been suspended or disbarred from practice before any court or administrative body.

6. I have never been ultimately denied admission to practice before any court or administrative body. I was temporarily denied *pro hac vice* admission without prejudice and with permission to re-file in a single instance by the PTAB in Cases IPR2012-00022 and IPR2013-00250 because the moving papers did not fully articulate my familiarity with the subject matter at issue in the proceedings (where I was not serving as trial counsel in the corresponding litigation).¹ After I provided additional detail showing my familiarity with the subject matter at issue in those proceedings, the Board granted my *pro hac vice* admission in both cases. *See* Case IPR2012-00022, Paper 53; Case IPR2013-00250, Paper 21.

7. No court or administrative body has ever imposed sanctions or contempt citations on me.

8. I have 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 the C.F.R.

¹ Case IPR2012-00022 and Case IPR2013-00250 were parallel cases concerning a single patent at issue. The cases were later joined by the PTAB in a single proceeding. *See* Case IPR2012-00022, Paper 104.

9. I understand that I will be subject to the Office's Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).

10. I am concurrently seeking *pro hac vice* admission to appear in Petitioner's co-pending related matters against Patent Owner, Case IPR2013-00429² and Case IPR2013-00430.³ I have applied to appear *pro hac vice* in seven other proceedings before the Office in the last three (3) years: Case IPR2013-00012, Case IPR2013-00015, Case IPR2012-00022, Case IPR2013-00250, Case IPR2013-00368, Case IPR2013-00371, and Case IPR 2013-00372. I was admitted *pro hac vice* in all seven cases and participated in IPR depositions in the cases.

² Case IPR2013-00429 challenges claims of U.S. Patent No. 8,323,630 ("the '630 patent"), which is in the same patent family as the patent at issue in this proceeding.

³ Case IPR2013-00430 challenges claims of U.S. Patent No. 8,388,941 ("the '941 patent"), which concerns the same subject matter as the patent at issue in this proceeding.

11. I have an established familiarity with the subject matter at issue in this proceeding. I have read and understand the pleadings submitted by Petitioner and Patent Owner in this proceeding and in Cases IPR2013-00429 and IPR2013-00430. I have engaged in hours of strategic and substantive discussions regarding this proceeding with Eldora L. Ellison, Ph.D., who is the lead counsel for Petitioner in this proceeding and in Case IPR2013-00429 and Case IPR2013-00430. Through my nearly 20 years of patent litigation experience, I am very familiar with the legal theories advanced in this case.

12. I have reviewed in detail U.S. Patent No. 8,268,299 ("the '299 patent"), which is the patent challenged in this proceeding. I have also reviewed Exhibits submitted by Petitioner in this proceeding, such as Exhibit 1002 (Declaration of Michael J. Miller, Ph.D.); Exhibit 1003 (Xia *et al.*, WO 2005/097067, "Zinc Preservative Composition and Method of Use"); Exhibit 1004 (Chowhan *et al.*, U.S. Patent No. 6,143,799, "Use of Borate-Polyol Complexes in Ophthalmic Compositions"); Exhibit 1005 (Gadd *et al.*, "Microorganisms and Heavy Metal Toxicity," *Microbial Ecology*, 4:303-317 (1978)); and Exhibit 1006 (FDA Approved Drug Label "TRAVATAN® (travoprost ophthalmic solution) 0.004% Sterile" (2001)).

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