

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

**APOTEX CORP.'S MOTION FOR *PRO HAC VICE* ADMISSION OF
H. KEETO SABHARWAL UNDER 37 C.F.R. § 42.10(c)**

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Patent Trial and Appeal Board

U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.10(c), Petitioner Apotex Corp. ("Apotex") respectfully requests the *pro hac vice* admission of H. Keeto Sabharwal in this proceeding. In email correspondence between Petitioner and Patent Owner dated January 24, 2014, Patent Owner agreed not to oppose this motion.

II. GOVERNING LAW, RULES, AND PRECEDENT

Section 42.10(c) states as follows:

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. For example, where the lead counsel is a registered practitioner, a motion to appear *pro hac vice* by counsel who is not a registered practitioner may be granted upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.

The Board has stated that motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c) must be filed in accordance with the "Order – Authorizing Motion for *Pro Hac Vice* Admission" entered in Case IPR2013-00010 (MPT) ("*Motorola* Order").

See, e.g., Case IPR 2012-00006 (SGL) (Paper 18); Case IPR2012-0035 (SGL) (Paper 13).

The *Motorola* Order requires that such motions (1) “[c]ontain a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* during the proceeding;” and (2) “[b]e accompanied by an affidavit or declaration of the individual seeking to appear attesting to the following”:

- i. Membership in good standing of the Bar of at least one State or the District of Columbia;
- ii. No suspensions or disbarments from practice before any court or administrative body;
- iii. No application for admission to practice before any court or administrative body ever denied;
- iv. No sanctions or contempt citations imposed by any court or administrative body;
- v. The individual seeking to appear has 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.;
- vi. The individual will be subject to the USPTO Code of Professional Responsibility set forth in 37 C.F.R. §§ 10.20 et seq. and disciplinary jurisdiction under 37 C.F.R. § 11.19(a);

- vii. All other proceedings before the Office for which the individual has applied to appear *pro hac vice* in the last three (3) years; and
- viii. Familiarity with the subject matter at issue in the proceeding.

III. STATEMENT OF FACTS

Based on the following facts, and supported by the Affidavit of Mr. Sabharwal (Ex. 1018) submitted herewith, Petitioner requests the *pro hac vice* admission of H. Keeto Sabharwal in this proceeding:

1. Petitioner's lead counsel, Eldora L. Ellison, is a registered practitioner (Reg. No. 39,967).
2. Mr. Sabharwal is a Director at the law firm of Sterne, Kessler, Goldstein and Fox P.L.L.C. (Ex. 1018 at ¶ 3.)
3. Mr. Sabharwal is an experienced patent litigation attorney. Mr. Sabharwal has been a patent litigation attorney for nearly 20 years. (*Id.* at ¶ 4.) Mr. Sabharwal has been litigating patent cases during the entire time period and, in particular, has litigated at least 30 patent infringement actions involving a variety of pharmaceutical and life

sciences matters and has served as lead trial counsel in a large majority of these matters. (*Id.*)

4. Mr. Sabharwal is a member of good standing of the State Bar of New York and the Bar of the District of Columbia. (*Id.* at ¶ 5.)
5. Mr. Sabharwal has never been suspended or disbarred from practice before any court or administrative body. (*Id.* at ¶ 5.)
6. No application of Mr. Sabharwal for admission to practice before any court or administrative body has ever been ultimately denied.¹ (*Id.* at ¶ 6.)

¹ The Board initially denied Mr. Sabharwal *pro hac vice* admission without prejudice and with permission to re-file in Cases IPR2012-00022 and IPR2013-00250 because the moving papers did not fully articulate his familiarity with the subject matter at issue in those proceedings. (Ex. 1018 at ¶ 6.) Both proceedings concerned a single patent at issue. (*Id.*) Mr. Sabharwal was not serving as trial counsel in the corresponding litigation. (*Id.*) After providing additional detail showing Mr. Sabharwal's familiarity with the subject matter at issue in the proceedings, the Board granted Mr. Sabharwal *pro hac vice* admission in both cases. (*Id.*)

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