

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

EVOLUTIONARY INTELLIGENCE, LLC
Patent Owner

Case IPR2014-00086
Patent 7,010,536

BRIAN J. McNAMARA, *Administrative Patent Judge.*

ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE OF
TODD KENNEDY

37 C.F.R. § 42.10

Evolutionary Intelligence LLC (“Patent Owner”) moves for the *pro hac vice* admission of attorney Todd Kennedy in accordance with 37 CFR § 42.10. Paper 7 (“Motion”). Apple Inc. (“Petitioner”) has not opposed the Motion. We grant the Motion.

I. Discussion

As set forth in 37 C.F.R. § 42.10(c), 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. 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.” 37 C.F.R. § 42.10(c). In authorizing motions for *pro hac vice* admission, the Board also requires 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 in this proceeding. (*See*, Paper 7, “Order – Authorizing Motion for *Pro Hac Vice* Admission” in IPR2013-00639, entered October 15, 2013).

Todd Kennedy provides uncontroverted testimony that he

- i. is a membership in good standing of the Bar of California;
- ii. has not been subject to any suspensions or disbarments from practice before any court or administrative body;
- iii. has never been denied any application for admission to practice before any court or administrative body;
- iv. has not been subject to sanctions or contempt citations imposed by any court or administrative body;

- v. 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 37 C.F.R.;
- vi. will be subject to the USPTO 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);
- vii. has listed all other proceedings before the Office for which he has applied to appear *pro hac vice* in the last three (3) years; and
- viii. has familiarity with the subject matter at issue in the proceeding.

Lead counsel for Patent Owner, Anthony Patek, who is registered to practice at the USPTO, has provided a statement of facts that Mr. Kennedy is an experienced litigator who is counsel for Patent Owner in co-pending litigation involving the patent that is the subject of this proceeding and has an established familiarity with the relevant claim construction and other issues in this proceeding. Thus, Patent Owner has shown good cause why Todd Kennedy should be recognized *pro hac vice* for purposes of this proceeding. Mr. Kennedy has provided the requisite affidavit or declaration. Therefore, Todd Kennedy has complied with the requirements for admission *pro hac vice* in this proceeding.

II. Order

It is

ORDERED that the Motion seeking admission *pro hac vice* for Todd Kennedy is GRANTED;

FURTHER ORDERED that Todd Kennedy may not act as lead counsel in the proceeding;

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FURTHER ORDERED that a registered practitioner must remain as lead counsel throughout the proceeding; and

FURTHER ORDERED that Todd Kennedy is to comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials, as set forth in Part 42 of the C.F.R.; and

FURTHER ORDERED that Todd Kennedy is to be subject to the Office's disciplinary jurisdiction under 37 C.F.R. § 11.19(a) and the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et. seq.*, which took effect on May 3, 2013.

PETITIONER: (via electronic transmission)

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