

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.
Petitioners

v.

OPENTV, INC.
Patent Owner

Case IPR2014-00252 (Patent 8,107,786)
Case IPR2014-00267 (Patent 7,409,437)
Case IPR2014-00269 (Patent 6,233,736)
Case IPR2014-00274 (Patent 6,018,768)¹

Before SALLY C. MEDLEY, JAMES T. MOORE, and
JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION
Motions for *Pro Hac Vice* Admission
37 C.F.R. § 42.10

¹ This decision addresses issues that are identical in the four cases. Therefore, we exercise our discretion to issue one decision to be entered in each of the four cases. The parties, however, are not authorized to use this style heading in their papers.

IPR2014-00252 (Patent 8,107,786)
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IPR2014-00274 (Patent 6,018,768)

Patent Owner OpenTV, Inc. (“OpenTV”) filed motions for *pro hac vice* admission of Mr. Matthew V. Topic in the above-identified cases on February 14, 2014. IPR2014-00252, Paper 7; IPR2014-00267, Paper 7; IPR2014-00269, Paper 7; IPR2014-00274, Paper 6.² The motions are unopposed. For the reasons discussed below, the motions are *granted*.

Pursuant to 37 C.F.R. § 42.10(c), the Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause. 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). The Board previously authorized the parties to file motions for *pro hac vice*, requiring that the moving party provide a statement of facts showing 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. Paper 4, Notice of Filing Date Accorded to Petition, 2 (incorporating requirements in the “Order – Authorizing Motion for *Pro Hac Vice* Admission” in IPR2013-00639).

In this proceeding, lead counsel for OpenTV is Mr. Russell E. Levine, a registered practitioner. In the motions, OpenTV states that there is good cause for the Board to recognize Mr. Topic *pro hac vice* during this proceeding, because he is an experienced litigating attorney with an established familiarity with the subject matter at issue in the proceeding. Paper 7, 2-3. In particular, the motion states that Mr. Topic is counsel in related litigation involving the same patents, including

² For expediency, IPR2014-00252 is representative and all subsequent citations are to IPR2014-00252 unless otherwise noted.

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being actively involved in issues of invalidity and claim construction. *Id.* Mr. Topic submits declarations attesting to, and explaining, these facts. IPR2014-00252, Ex. 2001; IPR2014-00267, Ex. 2001; IPR2014-00269, Ex. 2001; IPR2014-00274, Ex. 2001. The motions and declarations comply with the requirements set forth in the Notice, and contains Mr. Topic's agreement to 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). *Id.*

Upon consideration, OpenTV has demonstrated that Mr. Topic possesses sufficient legal and technical qualifications to represent OpenTV in this proceeding, and the Board recognizes a need for OpenTV to have related litigation counsel involved. Accordingly, OpenTV has established good cause for Mr. Topic's admission. Mr. Topic will be permitted to appear *pro hac vice* in this proceeding as back-up counsel only. *See* 37 C.F.R. § 42.10(c).

For the foregoing reasons, it is

ORDERED that OpenTV's motions for *pro hac vice* admission of Mr. Matthew V. Topic for these proceedings are *granted*;

FURTHER ORDERED that OpenTV is to continue to have a registered practitioner represent it as lead counsel for these proceedings;

FURTHER ORDERED that Mr. Topic 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 Title 37, Code of Federal Regulations; and

FURTHER ORDERED that Mr. Topic is 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.*

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