

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EASTMAN KODAK COMPANY, AGFA CORPORATION, ESKO SOFTWARE  
BVBA, and HEIDELBERG, USA

Petitioners,

v.

CTP INNOVATIONS, LLC

Patent Owner.

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Case IPR2014-00790

U.S. Patent No. 6,611,349

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**PETITIONERS' OPPOSITION TO MOTION FOR ADMISSION OF  
SAMUEL F. MILLER TO APPEAR *PRO HAC VICE***

Petitioners' Opposition to Motion for Admission *Pro Hac Vice*

On May 20, 2015, Patent Owner CTP Innovations, LLC (“Patent Owner”) filed a Motion for *Pro Hac Vice* Admission of Mr. Samuel F. Miller in the above-identified proceeding (Paper 24). Despite well-established practice to the contrary, Patent Owner did not confer with Counsel for Petitioners before filing the present Motion. Because Patent Owner has failed to provide any evidence that Mr. Miller “is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding,” Petitioners’ must oppose Patent Owner’s belated Motion.<sup>1</sup>

37 C.F.R. § 42.10(c) provides that:

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.

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<sup>1</sup> Patent Owner filed its mandatory notice in this case on June 11, 2014, listing Mr. Miller as “*pending pro hac vice admission*,” yet Patent Owner waited nearly a year to file the instant Motion.

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The Board has consistently held that conclusory statements attesting to counsel as an experienced patent litigation attorney, or to counsel's involvement in related district court proceedings, deficient under its rules. *See, e.g., Hyundai Mobis Co., Ltd. v. Autoliv ASP, Inc.*, IPR2014-01006, Paper 21 at 2-3 (PTAB March 10, 2015) ("The Second Motion merely contains a general statement from Mr. Roger W. Parkhurst, counsel of the Petitioner, that Mr. Lall is an experienced patent litigation attorney and is co-counsel in the related district court proceeding. Such a statement does not satisfy the aforementioned requirement for an affidavit or declaration."); *Kaiser Aluminum v. Constellium Rolled Prods. Ravenswood, LLC*, IPR2014-01002, Paper 28 at 2 (PTAB Feb. 26, 2015) ("Patent Owner is vague about the extent of Mr. Lynch's experience litigating patent cases, and includes no information from which we reasonably can conclude that he has personally reviewed the patent-at-issue, the Petition, or its accompanying exhibits.... Mr. Lynch's statement that he has 'an established familiarity with the subject matter at issue in these proceedings' and has 'acquired substantial understanding of the underlying legal and technological issues at stake in these proceedings' is inadequate...."); *QSC Audio Prods., Inc. v. Crest Audio, Inc.*, IPR2014-00127, Paper 32 at 2 (PTAB Dec. 23, 2014) (same).

Here, Patent Owner's Motion and the accompanying Affidavit of Mr. Miller simply conclude that Mr. Miller is "familiar with the subject matter at issue in this

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proceeding.” (Ex. 2018 at ¶ 10.) There is no information or evidence regarding the extent of Mr. Miller’s experience litigating patent cases nor, more importantly, any information or evidence regarding Mr. Miller’s familiarity with the subject matter at issue in the proceeding. Similarly, Counsel for Petitioners has had limited exposure to Mr. Miller in this proceeding and, therefore, is unable to gauge Mr. Miller’s understanding of the technology at issue. Because Mr. Miller has not established sufficient legal and technical qualifications to represent Patent Owner in this proceeding, the criteria for *pro hac vice* admission have not been satisfied. *Kaiser Aluminum*, IPR2014-01002, Paper 28 at 2. Petitioners are compelled to oppose this late stage motion.

Accordingly, due to the late stage of Patent Owner’s Motion<sup>2</sup> and that further briefing will only serve to distract from the upcoming oral argument, Patent Owner’s motion for *Pro Hac Vice* Admission of Mr. Samuel F. Miller should be denied with prejudice.

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<sup>2</sup> See footnote 1, *supra*.

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Respectfully submitted,

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Neustadt, LLP

Dated: May 27, 2015

/Scott A. McKeown/

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SOFTWARE BVBA, and

HEIDELBERG, USA

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