

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

FRESENIUS KABI USA LLC

Petitioner,

v.

CUBIST PHARMACEUTICALS, INC.

Patent Owner.

Case: IPR2015-01572
Patent No. 8,058,238

**MOTION FOR *PRO HAC VICE* ADMISSION OF
ROBERT V. CERWINSKI UNDER 37 C.F.R. § 42.10(c)**

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Pursuant to the Board's "Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response," dated July 29, 2015 (Paper 3), authorizing the parties to file motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c), Petitioner Fresenius Kabi USA LLC respectfully requests that the Board allow Robert V. Cerwinski to appear *pro hac vice* on its behalf in this proceeding.

II. REASONS THE REQUESTED RELIEF SHOULD BE GRANTED

As set forth in the Statement of Material Facts below, as required by 37 C.F.R. § 42.10(c), Petitioner has demonstrated good cause to admit Mr. Cerwinski *pro hac vice* in this proceeding. In particular, Petitioner's lead counsel is a registered practitioner, and Mr. Cerwinski is an experienced litigating attorney having an established familiarity with the subject matter at issue in this proceeding.

Furthermore, this motion is being filed more than twenty one days after service of the petition; includes a statement of facts showing good cause for the Board to recognize Mr. Cerwinski *pro hac vice*; and is accompanied by the declaration of Robert V. Cerwinski in Support of Petitioner's Motion for *Pro Hac Vice* Admission (Ex. 1040), all in accordance with the "Order Authorizing Motion for *Pro Hac Vice* Admission" in Case IPR2013-00639, Paper 7.

III. STATEMENT OF MATERIAL FACTS

1. 37 C.F.R. § 42.10(c) provides:

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.

2. Elizabeth J. Holland, lead counsel for Petitioner Fresenius Kabi USA LLC in this proceeding, is a registered practitioner holding Registration No. 47,657.

3. As set forth in the declaration of Robert V. Cerwinski in Support of Petitioner's Motion for *Pro Hac Vice* Admission (Ex. 1040), Mr. Cerwinski is an experienced litigating attorney. Specifically, Mr. Cerwinski has nearly 18 years of experience representing clients in patent litigations, primarily in the chemical arts, in United States district courts and the Court of Appeals for the Federal Circuit. (Ex. 1040, ¶ 2).

4. Mr. Cerwinski also has an established familiarity with the subject matter at issue in this proceeding. Patent Owner has asserted U.S. Patent No. 8,058,238 (“the ’238 patent”), the patent at issue in this proceeding, against Petitioner in *Cubist Pharms., Inc. v. Fresenius Kabi USA, LLC*, 14-cv-00914 (D. Del.). Mr. Cerwinski is litigation counsel for Fresenius Kabi USA LLC in that litigation, and in the course of that representation, developed a strong familiarity with the ’238 patent, its prosecution history, the general subject matter to which the ’238 patent is directed, and the prior art references relied upon by Petitioner in support of its invalidity grounds in this proceeding. (Ex. 1040, ¶ 10). Additionally, Mr. Cerwinski has thoroughly reviewed the Petition and accompanying Exhibits submitted in this proceeding. (*Id.*).

5. Mr. Cerwinski has attested to the each of the requirements set forth in paragraph 2(b) of the “Order Authorizing Motion for *Pro Hac Vice* Admission” in Case IPR2013-00639, Paper 7. (Ex. 1040, ¶¶ 3-10).

IV. CONCLUSION

In view of the foregoing, Petitioner respectfully submits that the requirements of 37 C.F.R. § 42.10(c) have been satisfied, and requests an Order permitting Robert V. Cerwinski to appear *pro hac vice* on its behalf in this proceeding.

Respectfully submitted,

Dated: August 13, 2015

/Elizabeth J. Holland/

Elizabeth J. Holland

Reg. No. 47,657

Lead Attorney for Petitioner Fresenius Kabi
USA LLC

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