

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COALITION FOR AFFORDABLE DRUGS X LLC,
Petitioner,

v.

ANACOR PHARMACEUTICALS, INC.,
Patent Owner.

Case No. IPR2015-01776
Patent No. 7,582,621

**PATENT OWNER'S MOTION FOR ADMISSION *PRO HAC VICE* OF
MICHAEL N. KENNEDY UNDER 37 C.F.R. § 42.10**

I. Relief Requested

Pursuant to 37 C.F.R. § 42.10, and in accordance with the Board's Order, Paper No. 7 in Case IPR2013-00639, and the Notice of Filing Date Accorded to Petition (Paper No. 4), Patent Owner requests that the Board admit Michael N. Kennedy *pro hac vice* in this proceeding.

II. Statement of Facts

37 C.F.R. §42.10(c) states 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. The facts, supported by the attached Declaration of Michael N. Kennedy in Support of Patent Owner's Motion for Admission *Pro Hac Vice* (“Kennedy Declaration”), establish good cause to admit Mr. Kennedy *pro hac vice* in this proceeding.

1. Lead counsel, Andrea G. Reister, is a registered practitioner.
2. Counsel, Michael N. Kennedy, is an experienced litigating attorney with over ten years in private law practice. Kennedy Decl. at ¶ 9. Mr. Kennedy

has served as counsel in over twenty patent infringement cases. *Id.* Mr. Kennedy is a member in good standing of the State Bar of New York and of the District of Columbia Bar, with no suspensions or disbarments from practice, nor any application for admission to practice denied, nor any sanctions or contempt citations, and is admitted to practice in the U.S. Court of Appeals for the Eleventh Circuit, the U.S. Court of Appeals for the Federal Circuit, and the U.S. District Court for the Southern District of New York. *Id.* at ¶¶ 2–5.

3. Mr. Kennedy has familiarity with the subject matter and patent at issue in this proceeding, U.S. Patent No. 7,582,621 (“the ’621 Patent”), including its prosecution history, the related U.S. Patent No. 7,767,657, and the scientific field to which the ’621 Patent is addressed. *Id.* at ¶ 10. Over the past several months, Mr. Kennedy has spent significant time consulting with Anacor Pharmaceuticals, Inc., the Patent Owner in this proceeding, in developing the responses to Petitioner’s invalidity challenges. *Id.* In particular, Mr. Kennedy was involved with retaining experts and developing the strategy relating to the Patent Owner Response and supporting expert declarations. *Id.* Mr. Kennedy also spent significant time working with Patent Owner’s expert declarants in this proceeding. *Id.* All of the above activities required developing a thorough understanding of the patent at issue in this proceeding, the prior art, and the relevant scientific field. *Id.*

4. Mr. Kennedy has substantial litigation experience with patents that relate, like the patent at issue here, to topical or transdermal delivery of pharmaceutical products. *Id.* at ¶ 11. Mr. Kennedy was counsel of record for Auxilium Pharmaceuticals (since acquired by Endo Pharmaceuticals) in Hatch-Waxman patent litigation relating to several patents covering Auxilium's TESTIM product, which is a gel for transdermal delivery of testosterone. *Id.* And Mr. Kennedy was counsel of record for Fougera (since acquired by Sandoz) in Hatch-Waxman patent litigation relating to several patents covering Fougera's SOLARAZE product, which is a gel for topical delivery of diclofenac sodium to treat actinic keratosis. *Id.*

5. Mr. Kennedy has read and will comply with the Office Patent Trial Guide and the Board's Rules for Practice for Trials set forth in Part 42 of the C.F.R., and he agrees to be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.100 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a). *Id.* at ¶¶ 6–7. Mr. Kennedy has not previously applied to appear *pro hac vice* in any other proceedings before the Office, although he is contemporaneously submitting *pro hac vice* applications on behalf of Patent Owner in the co-pending proceedings IPR2015-01780 and IPR2015-01785. *Id.* at ¶ 8.

III. Analysis

The facts contained in the Statement of Facts above, and contained in the Kennedy Declaration, establish that there is good cause to admit Mr. Kennedy *pro hac vice* in this proceeding, under 37 C.F.R. § 42.10. Lead counsel is a registered practitioner, Mr. Kennedy is an experienced litigating attorney, and Mr. Kennedy has an established familiarity with the subject matter at issue in this proceeding.

IV. Conclusion

For the foregoing reasons, Patent Owner respectfully requests that the Board admit Michael N. Kennedy *pro hac vice* in this proceeding.

Dated: June 13, 2016

Respectfully submitted,

By 

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