

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTIVISION BLIZZARD, INC.,
ELECTRONIC ARTS INC.,
TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K SPORTS, INC.,
ROCKSTAR GAMES, INC., and
BUNGIE, INC.,
Petitioner,

v.

ACCELERATION BAY, LLC,
Patent Owner.

Case IPR2015-01996¹
Patent 6,829,634

**PATENT OWNER'S MOTION FOR *PRO HAC VICE* ADMISSION OF
PAUL J. ANDRE UNDER 37 C.F.R. § 42.10(c)**

¹ Bungie, Inc., who filed a Petition in IPR2016-00964, has been joined as a petitioner in this proceeding.

I. Statement of Precise Relief Requested

Pursuant to 37 C.F.R. § 42.10(c) and Paper No. 3 authorizing the parties to file motion for *pro hac vice* admission under 37 C.F.R. § 42.10(c), Petitioner Acceleration Bay, LLC (“Acceleration Bay”), requests that the Patent Trial and Appeal Board (the “Board”) admit Paul J. Andre *pro hac vice* in this proceeding, IPR2015-01996.

In support of this motion, a declaration of Paul J. Andre is submitted as Exhibit 1 explaining that he satisfies all the criteria for *pro hac vice* admission as set forth in Case IPR2013-00639, Paper 7 (Oct. 15, 2013).

This motion is being filed no sooner than twenty one (21) days after service of the petition.

II. Statement of Facts

Based on the following facts, and supported by the Declaration of Paul J. Andre Declaration in Support of *Pro Hac Vice* Admission (“Andre Declaration”) submitted herewith as Exhibit 1, Acceleration Bay hereby requests *pro hac vice* admission of Mr. Andre in this proceeding:

1. Lead counsel, James Hannah, is a registered practitioner (Reg. No 56,369).
2. Mr. Andre is a partner at the law firm Kramer Levin Naftalis & Frankel LLP. Andre Declaration, ¶ 1.

3. Mr. Andre is an experienced litigating attorney. Mr. Andre has been a litigating attorney for more than twenty (20) years. Mr. Andre has been litigating patent cases during that entire time period. *Id.*, ¶ 2.

4. Mr. Andre is a member in good standing of the State Bar of California, State Bar of New York, State Bar of Connecticut, and the Bar of District of Columbia. *Id.*, ¶ 3.

5. Mr. Andre has never been suspended or disbarred from practice before any court or administrative body. *Id.*, ¶ 4.

6. Mr. Andre was once denied *pro hac vice* admission to the Board. In particular, Mr. Andre was denied *pro hac vice* admission to the Board for the Inter Partes Reexamination Appeal, *Everbridge, Inc., Federal Signal Corp., Twitter, Inc. v. Copper Notification, Inc.*, Control No. 95/001,425, Appeal 2013-007396. But the denial was due to an unintentional procedural error. At the time, Mr. Andre's petition was erroneously and unintentionally directed towards complying with Part 42 of Title 37 which governs AIA Trial Proceedings, instead of the proper Part 41 of Title 37 which governs *inter partes* reexamination appeal proceedings. As Part 42 of Title 37 applies different standards than Part 41 of Title 37, the petition was denied. *Id.*, ¶ 5.

7. Specifically, Mr. Andre submitted an application for *pro hac vice* under Part 42 of Title 37 of the C.F.R. in *Everbridge, Inc. et. al. v. Cooper*

Notification, Inc. In so doing, Mr. Andre made the requisite affirmations under Part 42 of Title 37 of the C.F.R. The Board denied Mr. Andre's application stating that : (1) patent owner is already represented by patent counsel registered to practice before the USPTO; (2) there was no explanation of the "interrelatedness of [the] proceeding and the district court litigation and appeal"; (3) and Mr. Andre stated that he would comply with the rules of Part 42 of Title 37 of the C.F.R. As shown, Mr. Andre complied with the wrong C.F.R. section which resulted in the petition's denial. No other application by Mr. Andre for admission to practice before any court or administrative body has been denied. In fact, Mr. Andre been admitted *pro hac vice* to federal courts in over 25 states. *Id.*, ¶ 5.

8. No sanctions or contempt citations have ever been imposed against Mr. Andre by any court or administrative body. *Id.*, ¶ 6.

9. Mr. Andre 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 the 37 C.F.R. *Id.*, ¶ 7.

10. Mr. Andre understands that he will be subject to the USPTO Code of Professional Responsibility set forth in 37 C.F.R. §§ 11.101 et seq. and disciplinary jurisdiction under 37 C.F.R. § 11.19(a). *Id.*, ¶ 8.

11. In the past three (3) years, Mr. Andre has applied once to appear *pro hac vice* before the United State Patent and Trademark Office in *Everbridge, Inc.*,

Federal Signal Corp., Twitter, Inc. v. Cooper Notification, Inc., Inter Partes Control No. 95/001,425, Appeal No. 2013-007396 and four times to appear *pro hac vice* before the Board in the *inter partes* review proceedings captioned *Finjan, Inc. v. FireEye, Inc.*, Case No. IPR2014-00344; *Purdue Pharma LP v. Depomed, Inc.*, Case No. IPR2014-00377; *Purdue Pharma LP v. Depomed, Inc.*, Case No. IPR2014-00378; and *Purdue Pharma LP v. Depomed, Inc.*, Case No. IPR2014-00379. *Id.*, ¶ 9.

12. Mr. Andre has an established familiarity with the subject matter at issue in this proceeding. *Id.*, ¶ 10.

13. Mr. Andre is Acceleration Bay's lead trial counsel in the related district court litigations against Petitioners Activision Blizzard, Inc., Electronic Arts Inc. and Take-Two Interactive Software, Inc. *et al* – specifically, *Acceleration Bay, LLC v. Activision Blizzard, Inc.*, C.A. 1:16-cv-00453 (D. Del.); *Acceleration Bay, LLC v. Electronic Arts Inc.*, C.A. 1:16-cv-00454 (D. Del.); and *Acceleration Bay, LLC v. Take-Two Interactive Software, Inc., et al*, C.A. 1:16-cv-00455 (D. Del.) – which involve the same asserted patent and other related patents. *Id.*, ¶ 10.

14. Mr. Andre has substantively reviewed U.S. Patent No. 6,829,634, the petition and all materials already filed in this proceeding. *Id.*, ¶ 11

III. Good Cause Exists for *Pro Hac Vice* Admission

In accordance with 37 C.F.R. § 42.10(c), the Board may recognize counsel

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