

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEPTUNE GENERICS, LLC,
APOTEX INC., APOTEX CORP.,
TEVA PHARMACEUTICALS USA, INC.,
and FRESENIUS KABI USA, LLC,

PETITIONERS,

V.

ELI LILLY & COMPANY,

PATENT OWNER.

Case IPR2016-00240¹
Patent 7,772,209

**PETITIONER'S UNOPPOSED MOTION FOR *PRO HAC VICE*
ADMISSION OF MIEKE K. MALMBERG AS BACK-UP COUNSEL**

¹ Cases IPR2016-01191 and IPR2016-01343 have been joined with the instant proceeding.

Pursuant to 37 C.F.R. § 42.10(c), Neptune Generics, LLC (“Neptune”) hereby respectfully requests that the Board grant admission *pro hac vice* to Ms. Mieke K. Malmberg to act as back-up counsel in this proceeding.

I. INTRODUCTION AND BACKGROUND

Counsel for Neptune consulted with counsel for Patent Owner, Eli Lilly & Company (“Lilly”), and Lilly agreed it would not oppose the present motion for *pro hac vice* admission of Ms. Malmberg.

On June 3, 2016, the Patent Trial and Appeal Board (the “Board”) instituted *inter partes* review of Lilly’s U.S. Patent No. 7,772,209. (*See* Paper 14.) The Board had previously authorized the parties to file motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c). (*See* Paper 3 at 2.) Therefore, the present motion is proper at this time.

II. STATEMENT OF FACTS SHOWING GOOD CAUSE FOR THE PRESENT MOTION

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.”

As explained and attested to in the accompanying Declaration of Mieke K. Malmberg, Ms. Malmberg has an established familiarity of the subject matter at issue in this *inter partes* review. (Ex. 1040 ¶¶ 10-13.) Ms. Malmberg is an experienced patent litigation attorney with specific experience serving as counsel in cases related to pharmaceutical patents. (*Id.* ¶ 9.) As a result of her work in those cases, Ms. Malmberg has gained expertise with regard to inventions in the field of pharmaceuticals.

Ms. Malmberg is a Member in good standing with the Texas State Bar (2013) (Bar No. 24086334), and the California State Bar (2000) (Bar No. 209992) and is admitted to practice in the U.S. Courts of Appeals for the Federal Circuit, U.S. Courts of Appeals for the Ninth Circuit, U.S. District Court of Central District of California, U.S. District Court of Southern District of California, U.S. District Court of the Northern District of California, and the U.S. District Court of the Eastern District of California. (*Id.* ¶ 1.)

Ms. Malmberg applied to appear *pro hac vice* before the Office in four other proceedings (four of which are related) within the last three years. On October 12, 2016, she applied to appear *pro hac vice* in *Coalition for Affordable Drugs (Adroca) LLC v. Acorda Therapeutics, Inc.*, IPR2015-01850; IPR2015-01853;

IPR2015-01857; and IPR2015-01858, and those applications are pending. (Ex. 1040 ¶ 2.) Concurrently with this motion, Petitioner is also filing a motion for *pro hac vice* admission for Ms. Malmberg in IPR2016-00237.

Ms. Malmberg has never been disbarred or suspended from practice before any court or administrative body. (*Id.* ¶ 3.)

Ms. Malmberg has never had any sanctions or contempt citations imposed on him from any court or administrative body. (*Id.* ¶ 4.)

Ms. Malmberg has never been denied any application for admission to practice before any court or administrative body. (*Id.* ¶ 5.)

Neptune's lead counsel for this proceeding, Ms. Sarah Spires, is a registered patent practitioner. (*Id.* ¶ 8.) Neptune seeks the admission of Ms. Malmberg as back-up counsel.

Ms. Malmberg has established deep familiarity with the specific subject matter at issue in this proceeding. (*Id.* ¶¶ 10-13.) Ms. Malmberg has reviewed and analyzed the Petition and supporting materials, has reviewed and analyzed U.S. Patent No. 7,772,209 ('209 Patent) as well as its prosecution history, and has reviewed and analyzed the Patent Owner Preliminary Response and the Decision regarding the Institution of *Inter Partes* Review. (*Id.* ¶¶ 11-13.)

Finally, Ms. Malmberg has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in 37 C.F.R. § 42 *et. seq.*, and has agreed to be subject to the USPTO Rules 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). (Ex. 1040 ¶¶ 6-7.)

III. STATEMENT OF RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that the Board grant admission *pro hac vice* to Ms. Malmberg as back-up counsel.

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