

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORPORATION,
Petitioner

v.

BLITZSAFE TEXAS, LLC,
Patent Owner

Case IPR2016-00418
Patent 8,155,342 B2

Before JAMESON LEE, THOMAS L. GIANNETTI, and HUNG H. BUI,
Administrative Patent Judges.

BUI, *Administrative Patent Judge.*

DECISION
*Patent Owner's Motion for
Pro Hac Vice Admission of Alfred R. Fabricant
37 C.F.R. § 42.10*

On January 21, 2016, Patent Owner filed a motion for *pro hac vice* admission of Alfred R. Fabricant. Paper 8 (“Motion”). Petitioner has not opposed the Motion. For the reasons provided below, the Motion is conditionally *granted*.

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. 37 C.F.R. § 42.10(c). If lead counsel is a registered practitioner, a non-registered practitioner may be permitted to appear *pro hac vice* “upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.” *Id.*

In this proceeding, lead counsel for Patent Owner is Peter Lambrianakos, a registered practitioner. Patent Owner’s motion is supported by the declaration of Alfred R. Fabricant. Paper 9 (“Decl.”).

Mr. Fabricant declares that he is a member in good standing of the Bar of the State of New York and the Bar of the State of Arizona. Decl. ¶ 2. Mr. Fabricant also declares that (1) he has been litigating patent cases for over 20 years and has been lead counsel in over 30 patent cases, (2) he has never been suspended, disbarred, sanctioned or cited for contempt by any court or administrative body; and (3) no court or administrative body has ever denied his application for admission to practice. *Id.* ¶¶ 1, 3–4.

Mr. Fabricant further declares that he is familiar with the subject matter at issue in this proceeding, on the basis that he is lead counsel for Patent Owner in related district court litigations involving the same patent as that at issue in this proceeding, including: (1) *Blitzsafe Texas, LLC v.*

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Hyundai Motor Company, et al., No. 15-cv-01275-JRG (E.D. Tex.); (2) *Blitzsafe Texas, LLC v. Honda Motor Co., Ltd., et al.*, No. 15-cv-01274-JRG (E.D. Tex.); (3) *Blitzsafe Texas, LLC v. Volkswagen Group of America, Inc. et al.*, No. 15-cv-01278-JRG (E.D. Tex.); (4) *Blitzsafe Texas, LLC v. Nissan Motor Co., Ltd., et al.*, 15-cv-01276-JRG (E.D. Tex.); and (5) *Blitzsafe Texas, LLC v. Toyota Motor Corporation et al.*, No. 15-cv-01277-JRG (E.D. Tex.). *Id.* ¶ 8.

Mr. Fabricant further states that (1) he has read and will comply with the Office Patent Trial Practice Guide and the Board’s Rules of Practice for Trials, as set forth in Part 42 of the Code of Federal Regulations; (2) he agrees to be subject to the Office Code of Professional Responsibility set forth in 37 C.F.R. §§ 11.101, *et seq.*, disciplinary jurisdiction under 37 C.F.R. § 11.19(a), and the Office Rules of Professional Conduct set forth in “*Changes to Representation of Others Before the United States Patent and Trademark Office*,” Final Rule, 78 Fed. Reg. 20180 (Apr. 3, 2013); and (3) he has not appeared *pro hac vice* in any proceedings before the Office in the past three years. *Id.* ¶¶ 5–7.

Mr. Fabricant has not identified the Title No. of the Code of Federal Regulations that is referred to in ¶ 5 of his declaration. In addition, Mr. Fabricant refers incorrectly to the Office Code of Professional Responsibility. The Office Code of Professional Responsibility was Part 10 of Title 37, Code of Federal Regulations, but was removed and replaced by the Office’s new Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101, *et seq.* See “*Changes to Representation of Others Before the United States Patent and Trademark Office*,” Final Rule, 78 Fed. Reg.

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20180 (Apr. 3, 2013). The Office's Rules of Professional Conduct took effect on May 3, 2013. *Id.* at 20180–81.

Accordingly, it is:

ORDERED that Patent Owner's Motion (Paper 8) for *pro hac vice* admission of Alfred R. Fabricant for this proceeding is *conditionally granted*, provided that within one week of the date of this Order, Patent Owner files supplemental declaration statements from Alfred R. Fabricant indicating that (1) he has read and will comply with the Board's rules as set forth in Part 42 of Title 37 of the Code of Federal Regulations, and (2) he agrees to be subject to the USPTO's Rules of Professional Conduct as set forth in 37 C.F.R. §§ 11.101 *et seq.*;

FURTHER ORDERED that if the above-noted supplemental declaration statements are timely filed within one week of the date of this Order, then Mr. Fabricant is authorized to be designated as backup counsel, but not lead counsel, in this proceeding;

FURTHER ORDERED that Mr. Fabricant will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials, as set forth in Part 42 of Title 37, Code of Federal Regulations, and will be subject to the Office's Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.*, and disciplinary jurisdiction under 37 C.F.R. § 11.19(a); and

FURTHER ORDERED that Patent Owner is to continue to have a registered practitioner represent it as lead counsel in this proceeding.

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