

Patent Owners' Motion for *Pro Hac Vice* Admission of David F. McGowan
Filed on behalf of Patent Owners Genentech, Inc. and City of Hope by:

David L. Cavanaugh
Reg. No. 36,476
Owen K. Allen
Reg. No. 71,118
Heather M. Petruzzi
Reg. No. 71,270
Robert J. Gunther, Jr.
Pro Hac Vice
Wilmer Cutler Pickering
Hale and Dorr LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006

Adam R. Brausa
Reg. No. 60,287
Daralyn J. Durie
Pro Hac Vice
David F. McGowan
Pro Hac Vice Pending
Durie Tangri LLP
217 Leidesdorff Street
San Francisco, CA 94111

Michael R. Fleming
Reg. No. 67,933
David I. Gindler
Pro Hac Vice
Joseph M. Lipner
Pro Hac Vice
Irell & Manella LLP
1800 Avenue of the
Stars, Suite 900
Los Angeles, CA
90067

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS, INC., AND
MERCK SHARP & DOHME CORP.,
Petitioners,
v.

GENENTECH, INC. AND CITY OF HOPE,
Patent Owners.

Case IPR2016-00710¹
Patent 6,331,415 B1

**PATENT OWNERS' UNOPPOSED MOTION FOR *PRO HAC VICE*
ADMISSION OF DAVID F. MCGOWAN UNDER 37 C.F.R. § 42.10(C)**

¹ Case IPR2017-00047 has been joined with this proceeding.

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.10(c), Patent Owners Genentech, Inc.

(“Genentech”) and City of Hope, by and through its attorneys, respectfully request that the Board admit David F. McGowan *pro hac vice* in this proceeding.

Petitioners' counsel have indicated that Petitioners do not oppose this motion.

II. GOVERNING LAW, RULES, AND PRECEDENT

Section 42.10(c) of 37 C.F.R. provides as follows:

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 Board has specified that a motion for *pro hac vice* admission shall be filed in accordance with the “ORDER-AUTHORIZING MOTION FOR PRO HAC VICE ADMISSION – 37 C.F.R. § 42.10” in *Unified Patents, Inc. v. Parallel Iron, LLC*, Case No. IPR2013-00639 (“Representative Order”). The Representative Order states that the motion must “[c]ontain a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* during the proceeding,” and “[b]e accompanied by an affidavit or declaration of the individual seeking to appear” which attests to a number of facts concerning the counsel

Patent Owners' Motion for *Pro Hac Vice* Admission of David F. McGowan seeking admission *pro hac vice* specified in the Representative Order.

Accompanying this motion as Exhibit 2138 is the Declaration of David F.

McGowan in Support of this Motion for Admission *Pro Hac Vice* ("McGowan Decl.").

III. STATEMENT OF FACTS

1. Patent Owners' lead counsel, David L. Cavanaugh, is a registered practitioner (Reg. No. 36,476).

2. Mr. McGowan is a Partner at the law firm Durie Tangri LLP. (McGowan Decl. ¶ 2) (Ex. 2138).

3. Mr. McGowan is an experienced litigating attorney and has been litigating cases relating to patents for the past seven years. (*Id.* ¶ 2).

4. Mr. McGowan is a member in good standing of the California State Bar, and among other courts, the United States Court of Appeals for the Federal Circuit. (*Id.* ¶ 3).

5. Mr. McGowan has never been suspended or disbarred from practice before any court or administrative body. (*Id.* ¶ 5).

6. No application filed under Mr. McGowan for admission to practice before any court or administrative body has ever been denied. (*Id.* ¶ 6).

7. No sanctions or contempt citations have been imposed against Mr. McGowan by any court or administrative body. (*Id.* ¶ 7).

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8. Mr. McGowan has read and agrees to comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in part 42 of 37 C.F.R. (*Id.* ¶ 8).

9. Mr. McGowan understands that he will be subject to the USPTO 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). (*Id.* ¶ 9).

10. Mr. McGowan has appeared *Pro Hac Vice* before the Patent Trial and Appeal Board once in the last three (3) years: *Sanofi-Aventis U.S. LLC, Regeneron Pharmaceuticals, Inc., and Genzyme Corporation v. Genentech, Inc. and City of Hope*, IPR2015-01624 (to which IPR2016-00460 was joined), in which U.S. Patent No. 6,331,415 ("the '415 patent") was the challenged patent. (*Id.* ¶ 10).

11. Mr. McGowan has an established familiarity with the subject matter at issue in this proceeding. He has handled patent cases relating to recombinant antibodies for more than six years, including cases in which the '415 patent was a patent-in-suit (*e.g.*, IPR2015-01624, in which Mr. McGowan was admitted *pro hac vice*). (*Id.* ¶ 11). In all of these cases involving the '415 patent, he has represented Genentech and in several of these cases, he also represented City of Hope. He has worked closely with Adam R. Brausa, counsel for Genentech and City of Hope in this matter. (*Id.*).

12. Additionally, Mr. McGowan has carefully reviewed and has

Patent Owners' Motion for *Pro Hac Vice* Admission of David F. McGowan developed extensive familiarity with the matters involved in and implicated by these proceedings, including the '415 patent and its licensing history, and the legal and factual issues raised by the Petitioners in this proceeding. As a result, Mr. McGowan has acquired substantial understanding of the underlying legal and technological issues at stake in this proceeding. (*Id.* ¶ 12).

IV. GOOD CAUSE EXISTS FOR *PRO HAC VICE* ADMISSION OF DAVID F. MCGOWAN

The facts outlined above in the Statement of Facts, supported by the Declaration of David F. McGowan (Ex. 2038), establish there is good cause to admit Mr. McGowan *pro hac vice* in this proceeding under 37 C.F.R. § 42.10. Patent Owners' lead counsel, David L. Cavanaugh, is a registered practitioner in good standing before the Board. Mr. McGowan is an attorney in good standing in the State Bar of California and the United States Court of Appeals for the Federal Circuit. Mr. McGowan has extensive experience litigating patents, including the '415 patent, which is the subject of this proceeding. As a result, Mr. McGowan is familiar with the subject matter at issue in this proceeding. Furthermore, Mr. McGowan has carefully reviewed the '415 patent at issue in this proceeding, its licensing history, the grounds advanced by the Petitioners and other aspects of the record in this proceeding, and is familiar with these matters. Based on his experience and knowledge, there is good cause to admit Mr. McGowan *pro hac vice* in this proceeding.

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