

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION,

Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,

Patent Owner.

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PTAB Case No. IPR2016-01897

Patent No. 9,253,239 B2

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**PETITIONER'S MOTION FOR *PRO HAC VICE* ADMISSION  
OF MATTHEW C. BERNSTEIN UNDER 37 C.F.R. § 42.10(c)**

Petitioner Microsoft Corporation (“Petitioner”) respectfully requests that the Board admit Matthew C. Bernstein as backup counsel *pro hac vice* in this proceeding.

Mr. Bernstein is the lead litigation counsel for Petitioner in the district court litigation involving U.S. Patent No. 9,253,239, and three other related patents U.S. Patent Nos. 7,139,794, 7,908,343 and 8,924,506, and has substantial knowledge in the substantive issues of the invalidity of the challenged claims of the ‘239 Patent in this proceeding. In addition, Mr. Bernstein has experience in IPR and CBM proceedings before the Board and is familiar with the rules and procedures for IPR and CBM proceedings. Therefore, Mr. Bernstein meets the requirements of “an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding” under 37 C.F.R. §42.10(c).

### **1. Time For Filing**

This Motion for *Pro Hac Vice* Admission has been authorized by the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response that was mailed on October 6, 2016 (Paper 3). This Motion is filed no sooner than twenty one (21) days after service of the petition.

## 2. Statement of Facts

In this proceeding, lead counsel for Petitioner is Bing Ai, a registered practitioner. The following statement of facts show that there is good cause for the Board to admit Mr. Bernstein *pro hac vice*.

Mr. Bernstein is a patent litigation attorney with more than 18 years of experience representing clients in cases involving computer hardware and software, semiconductors, Internet and e-commerce, hand held computers and other mobile devices. (Affidavit of Matthew C. Bernstein (“Bernstein Affidavit”), ¶ 8 in Exhibit 1017.)

Mr. Bernstein regularly litigates patent cases in various forums including the United States Court of Appeals for the Federal Circuit, various federal district courts, and the International Trade Commission (*Id.*) He has experience representing clients in many phases of litigation including discovery, Markman hearings, jury trials, and appeals. (*Id.*) Mr. Bernstein ’s biography is attached to the Bernstein Affidavit (Exhibit 1017) as Appendix A.

U.S. Patent No. 9,253,239, and three other related patents, U.S. Patent Nos. 7,139,794, 7,908,343 and 8,924,506, are currently asserted against Petitioner in a co-pending litigation, *Bradium Techs. LLC v. Microsoft Corp.*, 1:15-cv-00031-RGA, filed in the U.S. District Court for the District of Delaware on January 9,

2015 (“the co-pending litigation”). That litigation led to the *inter partes* review proceeding under PTAB Case No. IPR2016-01897. (*Id.* at ¶ 9.)

Mr. Bernstein is lead counsel for Petitioner in the co-pending litigation and, as such, oversees and handles all phases of the litigation from discovery through trial. (*Id.* at ¶ 10.) Mr. Bernstein is familiar with the technologies and issued claims in Patent No. 9,253,239, prior art references and invalidity grounds based on the prior art. (*Id.*)

In addition, Mr. Bernstein has handled or has been handling more than 20 IPR and CBM proceedings before the Board and is familiar with the rules and procedures for IPR and CBM proceedings in general. Notably, Mr. Bernstein has significant knowledge on the specific issues raised in this IPR proceeding.

Petitioner has invested significant financial resources in the related matter in which Mr. Bernstein serves as lead counsel. Petitioner therefore respectfully submits that there is good cause for the Board to recognize Mr. Bernstein as counsel *pro hac vice* during this proceeding.

### **3. Affidavit or Declaration of Individual Seeking to Appear**

This Motion for *Pro Hac Vice* Admission is accompanied by an Affidavit of Mr. Bernstein (Exhibit 1017), which attests to the requirements for *pro hac vice* admission set forth in the PTAB decision in the IPR proceeding of *Unified Patent v. Parallel Iron*, IPR2013-00639, Paper 7, dated Oct. 15, 2013.

**4. Conclusion**

Accordingly, Petitioner submits that there is good cause under 37 C.F.R. § 42.10(c) for the Board to admit Matthew C. Bernstein as counsel *pro hac vice* and to authorize Mr. Bernstein to represent Petitioners as back-up counsel in this proceeding.

Dated: December 20, 2016

Respectfully submitted,

/Bing Ai/

Lead Counsel

Bing Ai, Reg. No. 43,312

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