

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,

Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,

Patent Owner.

PTAB Case No. IPR2016-01897

Patent No. 9,253,239 B2

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

Petitioner Microsoft Corporation (“Petitioner”) respectfully requests that the Board admit Evan S. Day as back-up counsel *pro hac vice* in this proceeding.

Mr. Day is 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. Day 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. Day 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. Day *pro hac vice*.

Mr. Day is a patent litigation attorney with more than 4 years of experience representing clients in cases involving computer hardware and software, Internet and e-commerce, hand held computers and other mobile devices, optics, displays, user interfaces, mapping services, audio applications, image processing, and digital graphics. (Affidavit of Evan S. Day (“Day Affidavit”), ¶ 8 in Exhibit 1018.)

Mr. Day regularly litigates patent cases in various forums including various federal district courts, and the International Trade Commission (*Id.*) He has experience representing clients in many phases of litigation including discovery, Markman hearings, and trial. (*Id.*) Mr. Day’s biography is attached to the Day Affidavit (Exhibit 1018) 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. Day is 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. Day 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. Day has handled multiple IPR proceedings before the Board and is familiar with the rules and procedures for IPR and CBM proceedings in general. Notably, Mr. Day 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. Day serves as counsel. Petitioner therefore respectfully submits that there is good cause for the Board to recognize Mr. Day 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. Day (Exhibit 1018), 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 Evan S. Day as counsel *pro hac vice* and to authorize Mr. Day to represent Petitioner as back-up counsel in this proceeding.

Dated: December 20, 2016

Respectfully submitted,

/Bing Ai/

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