

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALKERMES PHARMA IRELAND LTD.
and ALKERMES, INC.,
Petitioners,

v.

OTSUKA PHARMACEUTICAL CO., LTD.,
Patent Owner

Case: IPR2017-00287
Patent No. 9,125,939 B2

**PETITIONERS' MOTION FOR *PRO HAC VICE* ADMISSION OF
NICHOLAS K. MITROKOSTAS UNDER 37 C.F.R. § 42.10(c)**

I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Pursuant to the Board’s “Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response,” dated November 29, 2016 (Paper No. 4), authorizing the parties to file motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c), Petitioners Alkermes Pharma Ireland Ltd. and Alkermes, Inc. (collectively, “Petitioners”) respectfully request that the Board allow Nicholas K. Mitrokostas to appear *pro hac vice* on their behalf in this proceeding.

II. REASONS THE REQUESTED RELIEF SHOULD BE GRANTED

As set forth in the Statement of Material Facts below, and as required by 37 C.F.R. § 42.10(c), Petitioners have demonstrated good cause to admit Mr. Mitrokostas *pro hac vice* in this proceeding. In particular, Petitioners’ lead counsel is a registered practitioner, and Mr. Mitrokostas is an experienced litigating attorney having an established familiarity with the subject matter at issue in this proceeding.

Furthermore, this motion is being filed more than twenty one days after service of the petition, includes a statement of facts showing good cause for the Board to recognize Mr. Mitrokostas *pro hac vice*, and is being filed concurrently with Exhibit 1077, the Declaration of Nicholas K. Mitrokostas in Support of Petitioners’ Motion for *Pro Hac Vice* Admission (“Mitrokostas Decl.”), all in

accordance with the “Order Authorizing Motion for *Pro Hac Vice* Admission” in *Unified Patents, Inc. v. Parallel Iron, LLC*, IPR2013-00639, Paper 7 at 3 (P.T.A.B. Oct. 15, 2013).

III. STATEMENT OF MATERIAL FACTS

37 C.F.R. § 42.10(c) provides that “[t]he 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.”

Theresa C. Kavanaugh, lead counsel for Petitioners in this proceeding, is a registered practitioner holding Registration No. 50,356.

As set forth in the Mitrokostas Decl., Mr. Mitrokostas is an experienced litigating attorney. Specifically, Mr. Mitrokostas has over a decade of experience representing clients in patent litigations, primarily in the chemical and pharmaceutical arts, in United States District Courts and the Court of Appeals for the Federal Circuit. (Mitrokostas Decl., ¶¶ 2, 3, 5). Mr. Mitrokostas has also been

admitted *pro hac vice* by the Office in five prior pharmaceutical matters.

(Mitrokostas Decl., ¶ 4).

Mr. Mitrokostas also has an established familiarity with the precise subject matter at issue in this proceeding. Mr. Mitrokostas has developed a strong familiarity with the '939 patent, its prosecution history, the general subject matter to which the '939 patent is directed, and the prior art references relied upon by Petitioner in support of its invalidity grounds in this proceeding. (Mitrokostas Decl., ¶ 6). Additionally, Mr. Mitrokostas has thoroughly reviewed the Petition and accompanying Exhibits submitted in this proceeding. (*Id.*).

Mr. Mitrokostas has attested to the each of the requirements set forth in paragraph 2(b)(i)-(viii) of the “Order Authorizing Motion for *Pro Hac Vice* Admission” in Case IPR2013-00639, Paper 7 at 3. (Mitrokostas Decl., ¶¶ 3-11).

IV. CONCLUSION

In view of the foregoing, Petitioners respectfully submit that the requirements of 37 C.F.R. § 42.10(c) have been satisfied, and request an Order permitting Nicholas K. Mitrokostas to appear *pro hac vice* on their behalf in this proceeding.

Dated: January 31, 2017

Respectfully submitted,

/Theresa C. Kavanaugh/

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