

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRO LABS LIMITED AND MICRO LABS USA INC.
Petitioners,

v.

SANTEN PHARMACEUTICAL CO., LTD. AND ASAHI GLASS CO., LTD.
Patent Owners.

Inter Partes Review No. IPR2017-01434
U.S. Patent No. 5,886,035

**MOTION FOR *PRO HAC VICE* ADMISSION OF H. KEETO
SABHARWAL UNDER 37 C.F.R. § 42.10(c)**

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.10(c), Petitioners Micro Labs USA Inc. and Micro Labs Limited (together, "Petitioners") respectfully request the *pro hac vice* admission of H. Keeto Sabharwal in this proceeding.

II. STATEMENT OF FACTS

Based on the following facts, and supported by the Declaration of Mr. Sabharwal (Ex. 1) submitted herewith, Petitioners request the *pro hac vice* admission of H. Keeto Sabharwal in this proceeding:

1. Petitioner's lead counsel, Cedric C.Y. Tan, is a registered practitioner.
2. Mr. Sabharwal is a partner at the law firm of Pillsbury Winthrop Shaw Pittman LLP.
3. Mr. Sabharwal is an experienced patent litigation attorney and Mr. Sabharwal has been a patent litigation attorney for over 20 years. (Ex. 1 at ¶ 1.) Mr. Sabharwal has been litigating patent cases during this entire time period and, in particular, has litigated at least 25+ patent infringement actions involving a variety of pharmaceutical and life sciences technologies, and has served as lead trial counsel in a large majority of these matters. (*Id.*)
4. Mr. Sabharwal has reviewed in detail the pleadings submitted by Petitioner and Patent Owner in this proceeding. (*Id.* at ¶ 7.) And Mr. Sabharwal has reviewed in detail the challenged patent, U.S. Patent No. 5,886,035 ("the '035

patent”). (*Id.*) He has also reviewed in detail the relevant references, pleadings and arguments set forth by both Petitioner and Patent Owner in this proceeding. (*Id.*)

5. Mr. Sabharwal has engaged in hours of strategic and substantive discussions regarding this proceeding with Cedric C.Y. Tan, who serves as lead counsel respectively for Petitioner in this proceeding. (*Id.* at ¶ 8.) Mr. Sabharwal was an integral part of the strategic planning and preparation of the Petition for *Inter Partes* Review which initiated this proceeding. (*Id.*) Mr. Sabharwal was involved in all aspects of the Petition for *Inter Partes* Review, including drafting and revising the Petition and the accompanying declarations in support of the Petition. Mr. Sabharwal is very familiar with all aspects of this proceeding including Petitioner's factual investigation and development of its unpatentability positions regarding the challenged claims of the '035 patent. (*Id.*)

6. Mr. Sabharwal has also been the lead trial counsel for the Petitioner in district court litigations, including *Santen Pharmaceutical Co., Ltd. et al. v. Micro Labs Ltd. et al.*, C.A. No. 16-353 (GMS) (D. Del.) which involves the '035 patent. (*Id.* at ¶ 9.) Mr. Sabharwal will continue to serve as lead litigation counsel for Petitioner in this litigation. (*Id.*)

7. Mr. Sabharwal is a member of good standing of the State Bar of New York and the Bar of the District of Columbia. (*Id.* at ¶ 3.)

8. Mr. Sabharwal has never been suspended or disbarred from practice before any court or administrative body. (*Id.* at ¶ 4.)

9. No application of Mr. Sabharwal for admission to practice before any court or administrative body has ever been ultimately denied.¹ (*Id.* at ¶ 5.)

10. No sanctions or contempt citations have ever been imposed against Mr. Sabharwal by any court or administrative body. (*Id.* at ¶ 6.)

11. Mr. Sabharwal has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in part 42 of the C.F.R. (*Id.* at ¶ 10.)

¹ The Board initially denied Mr. Sabharwal *pro hac vice* admission without prejudice and with permission to re-file in Cases IPR2012-00022 and IPR2013-00250 because the moving papers did not fully articulate his familiarity with the subject matter at issue in those proceedings. Both proceedings concerned a single patent at issue. (*See* Case IPR2012-00022, Paper 53; Case IPR2013-00250, Paper 21.) After providing additional detail showing Mr. Sabharwal's familiarity with the subject matter at issue in the proceedings, the Board granted Mr. Sabharwal *pro hac vice* admission in both cases. (*Id.*)

12. Mr. Sabharwal understands that he will be subject to the USPTO Code of Professional Responsibility set forth in 37 C.F.R. §§ 10.20 et seq. and disciplinary jurisdiction under 37 C.F.R. § 11.19(a). (*Id.* at ¶ 11.)

13. Mr. Sabharwal has applied to appear *pro hac vice* in the following proceeding before the Office in the last three (3) years: Case IPR2014-00876. (*Id.* at ¶ 12.)

III. GOOD CAUSE EXISTS FOR PRO HAC VICE ADMISSION

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. 37 C.F.R. § 42.10(c). Petitioner's lead counsel, Cedric C.Y. Tan, is a registered practitioner. Based on the facts contained herein, as supported by Mr. Sabharwal's Declaration, good cause exists to admit Mr. Sabharwal *pro hac vice* in this proceeding because Mr. Sabharwal has an established familiarity with the subject matter at issue in this proceeding. (Ex. 1 at ¶¶ 7-9.) Additionally, Mr. Sabharwal's *pro hac vice* admission would serve to provide Petitioner with the counsel of its choice, will better align administration of the IPR with potential district court litigation, and is essential to settlement efforts between Patent Owner and Petitioner. Based on the facts contained herein, as supported by Mr. Sabharwal's Affidavit, good cause exists to admit Mr. Sabharwal *pro hac vice* in this proceeding.

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