

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALPHATEC HOLDINGS, INC. AND ALPHATEC SPINE, INC.
Petitioner,

v.

NUVASIVE, INC.,
Patent Owner

Case No. IPR2019-00362
U.S. Patent No. 8,361,156

**PETITIONER'S MOTION FOR *PRO HAC VICE* ADMISSION OF
NIMALKA R. WICKRAMASEKERA
UNDER 37 C.F.R. § 42.10**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450
Submitted Electronically via the PTAB E2E

Pursuant to 37 C.F.R. § 42.10, and pursuant to the authorization provided by the United States Patent and Trademark Office's Patent Trial and Appeal Board ("Board") in Paper Number 5, dated January 17, 2019 ("the Notice"), Petitioner Alphatec Holdings, Inc. and Alphatec Spine, Inc. ("Petitioner" or "Alphatec") submits this unopposed motion for Nimalka R. Wickramasekera to appear *pro hac vice*. Petitioner respectfully requests the Board to recognize Ms. Wickramasekera as counsel *pro hac vice* during this proceeding and demonstrates good cause for doing so as shown below.

I. TIME FOR FILING

Pursuant to the authorization provided in the Notice, this motion for *pro hac vice* admission is being filed no sooner than twenty-one days after service of the Petition.

II. STATEMENT OF FACTS

A. Nimalka R. Wickramasekera

Pursuant to the Notice, the following statement of facts shows that good cause exists for the Board to recognize Ms. Wickramasekera *pro hac vice*.

Lead counsel for this proceeding, Andrew Sommer, is a registered practitioner (Reg. No. 53,932).

Ms. Wickramasekera is a litigation attorney who has been involved in multiple patent infringement cases in federal district courts. Ex. 1048 ¶ 8–9. She

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has experience in various aspects of patent infringement matters and has participated in multiple patent cases in federal courts. *Id.* She is lead counsel for Petitioner in *NuVasive, Inc. v. Alphatec Holdings, Inc. et al.*, Case No. 3:18-cv-00347-CAB-MDD (S.D. Cal.), filed on February 13, 2018, where the '156 patent is currently being asserted. Ex.1048 ¶ 8. Until it settled, she was also counsel for Warsaw Orthopedic, Inc. in *Warsaw Orthopedic, Inc. et al. v. NuVasive, Inc.*, Case No. 3:12-cv-002738-CAB-MDD (S.D. Cal.), filed on August 17, 2012, in which Patent Owner previously asserted the '156 patent. Ex. 1048 ¶ 8.

Ms. Wickramasekera is a member in good standing of the Bars of the State of California and the State of Illinois, and is admitted to practice in the United States Courts of Appeals for the Ninth and Federal Circuits. *Id.* ¶ 1.

Ms. Wickramasekera has not been suspended or disbarred from practice, has never had any application for admission to practice denied, and has never had any sanctions or contempt citations imposed against her. *Id.* ¶¶ 2-4.

Ms. Wickramasekera has obtained substantial familiarity with the involved patent, the prior art, and the various issues raised in this proceeding. *Id.* ¶ 8–9. Moreover, Ms. Wickramasekera has reviewed the involved patent, the Petition, the prior art, and all other cited materials. *Id.* She was involved in the preparation of the Petition upon which the Board instituted trial. *Id.* ¶ 9. Given her extensive patent litigation experience and familiarity with the instant Petition, the cited

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materials, and the patented technology, Ms. Wickramasekera has established familiarity with the subject matter at issue in this proceeding. *Id.*

Ms. Wickramasekera has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules for Practice for Trials set forth in Part 42 of Title 37 of the Code of Federal Regulations, and she agrees to be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.*, and to disciplinary jurisdiction under 37 C.F.R. § 11.19(a). *Id.* ¶¶ 5-6.

Ms. Wickramasekera was admitted *pro hac vice* in Case Nos. IPR2013-00206, IPR2013-00208, and IPR2013-00396. *Id.* ¶7. Mr. Wickramasekera is concurrently applying to appear *pro hac vice* in related Case Nos. IPR2019-00361, IPR2019-00546. *Id.* ¶7.

Given Ms. Wickramasekera's familiarity with the subject matter at issue in this proceeding, Petitioner respectfully submits that it has shown good cause for the Board to recognize Ms. Wickramasekera as counsel *pro hac vice* during this proceeding.

III. DECLARATION OF INDIVIDUAL SEEKING TO APPEAR

This Motion is accompanied by Declaration of Ms. Wickramasekera.

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Date: February 19, 2019

Respectfully submitted,

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