

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.

IPR2019-00361 (Patent 8,187,334 B2)¹
IPR2019-00362 (Patent 8,361,156 B2)
IPR2019-00546 (Patent 8,187,334 B2)

Before DENISE M. POTHIER, HYUN J. JUNG, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

POTHIER, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Motions for Admission
Pro Hac Vice of Nimalka R. Wickramasekera
37 C.F.R. § 42.10

¹ This Order addresses issues that are the same in the above-identified proceedings. We exercise our discretion to issue one Order to be entered in each proceeding. The Parties are not authorized to use this joint heading and filing style in their papers.

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On February 19, 2019, Petitioner filed motions for admission *pro hac vice* of Nimalka R. Wickramasekera in each of the above-identified proceedings (collectively, “Motions”). Paper 10.² Petitioner also filed declarations of Ms. Wickramasekera in support of the Motions (collectively, “Declarations”). Ex. 1048.³ Patent Owner has not opposed the Motions. *See* Paper 10, 2. For the reasons provided below, Petitioner’s Motions are *granted*.

Pursuant to 37 C.F.R. § 42.10(c), 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. In its notice authorizing motions for *pro hac vice* admission, the Board requires a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* and an affidavit or declaration of the individual seeking to appear in this proceeding. *See* Paper 5, 2–3 (citing *Unified Patents, Inc. v. Parallel Iron, LLC*, Case IPR2013-00639 (PTAB Oct. 15, 2013) (Paper 7) (representative “Order – Authorizing Motion for *Pro Hac Vice* Admission”)).

In the Motions, Petitioner states there is good cause for the Board to recognize Ms. Wickramasekera *pro hac vice* during these proceedings because she “has experience in various aspects of patent infringement

² For purposes of expediency, we cite to Papers filed in IPR2019-00361. Petitioner filed similar Motions in IPR2019-00362 (Paper 9) and IPR2019-00546 (Paper 8).

³ We cite to Exhibits filed in IPR2019-00361. Petitioner filed similar Exhibits in IPR2019-00362 (Ex. 1048) and IPR2019-00546 (Ex. 1049).

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matters and has participated in multiple patent cases in federal courts,” “is lead counsel for Petitioner in” related district court litigations, and “has obtained substantial familiarity with the involved patent, the prior art, and the various issues raised in this proceeding.” Paper 10, 2–3. Accordingly, Petitioner has established good cause for *pro hac vice* admission of Ms. Wickramasekera. Ms. Wickramasekera will be permitted to serve as back-up counsel only. *See* 37 C.F.R. § 42.10(c).

Accordingly, it is:

ORDERED that Petitioner’s Motions for *pro hac vice* admission of Nimalka R. Wickramasekera in the above-identified proceedings are *granted*;

FURTHER ORDERED that Petitioner is to continue to have a registered practitioner represent it as lead counsel in the above-identified proceedings;

FURTHER ORDERED that Ms. Wickramasekera is authorized to represent Petitioner only as back-up counsel in the above-identified proceedings;

FURTHER ORDERED that Ms. Wickramasekera is to comply with the Office Patent Trial Practice Guide, as updated by the August 2018 Update, 83 Federal Register 39,989 (Aug. 13, 2018), and the Board’s Rules of Practice for Trials, as set forth in Part 42 of Title 37, Code of Federal Regulations; and

FURTHER ORDERED that Ms. Wickramasekera shall be subject to the Office’s disciplinary jurisdiction under 37 C.F.R. § 11.19(a), as well as

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the Office's Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101

et seq.

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For PETITIONER:

Jovial Wong
jwong@winston.com

David Dalke
ddalke@winston.com

For PATENT OWNER:

Michael Rosato
mrosato@wsgr.com

Paul Tripodi
ptripodi@wsgr.com

Sonja Gerrard
sgerrard@wsgr.com