

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TENNANT COMPANY,

Petitioner,

v.

OXYGENATOR WATER TECHNOLOGIES, INC.,

Patent Owner.

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IPR2021-00625  
Patent RE 45,415 E

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Before KRISTINA M. KALAN, CHRISTOPHER M. KAISER, and  
WESLEY B. DERRICK, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION

Conditionally Granting Patent Owner's Motion  
for *Pro Hac Vice* Admission of  
Todd S. Werner  
*37 C.F.R. § 42.10*

## I. INTRODUCTION

On September 22, 2021, Patent Owner, Oxygenator Water Technologies, Inc. (“Patent Owner”), filed a motion for *pro hac vice* admission of Todd S. Werner the above-captioned proceeding. Paper 15 (“Motion”). Petitioner, Tennant Company, has not filed an opposition. The parties have conferred, and the Petitioner does not oppose this Motion. Motion 2.

For the reasons provided below, Patent Owner’s Motion is *conditionally* granted. The grant is conditioned upon Patent Owner filing a Power of Attorney and Mandatory Notices that identify Mr. Werner as back-up counsel. Petitioner’s current Power of Attorney (Paper 6) and Mandatory Notices (Paper 5) do not identify Mr. Werner.

## II. DISCUSSION

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

In this proceeding, lead counsel for Patent Owner, J. Derek Vandenburg, is a registered practitioner. Motion 5. Patent Owner asserts that there is good cause for us to recognize Mr. Werner *pro hac vice* in this

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proceeding. Motion 2–4. Patent Owner’s assertions in this regard are supported by a Declaration of Mr. Werner. Ex. 2112 (“Declaration”).

Mr. Werner declares that he is a member in good standing of the State Bar of Minnesota. Declaration ¶ 2. Mr. Werner also declares that he is familiar with the subject matter at issue in this proceeding, including U.S. Patent No. RE 45,415 E and the prior art references that are asserted by Patent Owner. *Id.* ¶¶ 10–11. Moreover, the facts alleged in Mr. Werner’s Declaration comply with all the requirements set forth in our representative Order authorizing motions for *pro hac vice* admission. *See id.* ¶¶ 1–12.

On this record, we determine that Mr. Werner has sufficient legal and technical qualifications to represent Patent Owner in this proceeding. Accordingly, Patent Owner has established that there is good cause for the *pro hac vice* admission of Mr. Werner in this proceeding.

### III. ORDER

Accordingly, it is

ORDERED that Patent Owner’s Motion for Admission *Pro Hac Vice* of Todd S. Werner is *conditionally granted*;

FURTHER ORDERED that Mr. Werner is authorized to represent Patent Owner only as back-up counsel in these proceedings;

FURTHER ORDERED that Patent Owner is to continue to have a registered practitioner represent it as lead counsel in this proceeding;

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FURTHER ORDERED that Mr. Werner shall comply with the Consolidated Trial Practice Guide<sup>1</sup> (84 Fed. Reg. 64,280 (Nov. 21, 2019)), and the Board's Rules of Practice for Trials, as set forth in Part 42 of Title 37, Code of Federal Regulations;

FURTHER ORDERED that Mr. Werner shall be subject to the Office's disciplinary jurisdiction under 37 C.F.R. § 11.19(a), as well as the Office's Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.*;

FURTHER ORDERED that Patent Owner must file, within ten (10) business days of the date of this order, updated Mandatory Notices identifying Mr. Werner as back-up counsel in accordance with 37 C.F.R. § 42.8(b)(3); and

FURTHER ORDERED that Patent Owner shall submit, within ten (10) business days of the date of this order, a Power of Attorney for Mr. Werner in accordance with 37 C.F.R. § 42.10(b).

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<sup>1</sup> Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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