

UNITED STATES PATENT AND TRADEMARK OFFICE  
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BEFORE THE PATENT TRIAL AND APPEAL BOARD  
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THORLEY INDUSTRIES LLC, D/B/A 4MOMS,  
Petitioner,

v.

KOLCRAFT ENTERPRISES, INC.,  
Patent Owner.

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Case IPR2016-00352  
Patent 9,027,180 B2  
\_\_\_\_\_

Before MICHAEL R. ZECHER, BRIAN J. McNAMARA, and  
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION

Denying Motion for *Pro Hac Vice* Admission of Mr. Raymond P. Niro, Jr.  
*37 C.F.R. § 42.10*

As authorized by the Notice of Filing Date Accorded to the Petition (Paper 3, 2–3), Patent Owner filed a “Motion for *Pro Hac Vice* Admission” (Paper 10<sup>1</sup>) of Mr. Raymond P. Niro, Jr. For the reasons explained below, the Motion is *denied without prejudice*.

#### I. Discussion

As set forth in 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. For example, where the lead counsel is a registered practitioner, a non-registered practitioner may be permitted to appear *pro hac vice* “upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.” 37 C.F.R. § 42.10(c). In authorizing motions for *pro hac vice* admission, we also require 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 in this proceeding. (See, Paper 7, “Order – Authorizing Motion for *Pro Hac Vice* Admission” in IPR2013-00639, entered October 15, 2013<sup>2</sup>). The affidavit or declaration must attest that, among other things, “[n]o application for admission to practice before any court or administrative body ever denied.” *Id.* at 3.

In a Declaration filed with the Motion, Mr. Niro attests that he “ha[s] never had an application for admission to practice before any court or administrative

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<sup>1</sup> It appears Patent Owner filed duplicate copies of the Motion and the accompanying Declaration. See Papers 8, 10 (Motion), Papers 9, 11 (supporting Declaration). This Order specifically refers to the later-filed Motion (Paper 10) and the later-filed Declaration (Paper 11).

<sup>2</sup> Available at <http://www.uspto.gov/patents-application-process/appealing-patent-decisions/decisions-and-opinions/representative-orders>.

body denied.” Paper 11 ¶ 3.<sup>3</sup> Mr. Niro further attests that he has applied to appear *pro hac vice* in three other proceedings before the Office within the last three years, including in *Inter Partes* Reexamination Control No. 95/000,514. *Id.* ¶ 7.

Citing the testimony of Mr. Niro, Patent Owner asserts that “[n]o application filed by Mr. Niro for admission to practice before any court or administrative body has ever been denied.” Paper 10, 4 (citing Paper 11 ¶ 3). However, Patent Owner later states:

The petition for admission *pro hac vice* in *Inter Partes* Reexamination Control No. 95/000,514 was denied based on different standards used in *Inter Partes* Reexamination and because the petition was submitted after the written record had been developed without Mr. Niro’s participation and oral arguments in those proceedings were limited to the written record. *See* Decision on Petition in *Inter Partes* Reexamination Control No. 95/000,514, October 18, 2013 at 5.

Paper 10, 6 n.1. This statement of Patent Owner directly contradicts Patent Owner’s assertion, and Mr. Niro’s testimony, that Mr. Niro has never been denied admission to practice before an administrative body. In his Declaration, Mr. Niro does not explain the circumstances of the denial, as required by our representative Order. *See* IPR2013-00639, Paper 7, 4 (“Where the affiant or declarant is unable to provide any of the information requested above in part 2(b) or make any of the required statements or representations under oath, the individual should provide a full explanation of the circumstances as part of the affidavit or declaration.”).

Based on the foregoing, we determine that Patent Owner has not made the requisite showing of good cause for *pro hac vice* admission of Mr. Niro.

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<sup>3</sup> The Declaration of Mr. Niro was filed as a paper in this case, rather than as a separate exhibit. The parties are cautioned that such evidence should be filed as an exhibit. *See* 37 C.F.R. § 42.63(a) (“Evidence consists of affidavits, transcripts of depositions, documents, and things. All evidence must be filed in the form of an exhibit.”).

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Therefore, Patent Owner's Motion is denied without prejudice to re-file a motion with supporting evidence consistent with the conditions imposed by our representative Order for *pro hac vice* admission. See IPR2013-00639, Paper 7.

## II. Order

It is

ORDERED that the Patent Owner's Motion for *Pro Hac Vice* Admission of Mr. Raymond P. Niro, Jr. is DENIED without prejudice.

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