

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

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

GALLIGAN, *Administrative Patent Judge*.

DECISION

Granting Patent Owner's Renewed Motion for *Pro Hac Vice*  
Admission of Mr. Raymond P. Niro, Jr.  
*37 C.F.R. § 42.10*

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 Case IPR2013-00639, entered October 15, 2013<sup>1</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. Furthermore, “[w]here 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.” *Id.* at 4.

On April 5, 2016, we denied without prejudice Patent Owner’s initial Motion for *Pro Hac Vice* Admission of Mr. Raymond P. Niro, Jr. (Paper 10) based on an inconsistency between the Motion and Mr. Niro’s supporting declaration. See Paper 13. In particular, the Motion indicated Mr. Niro had

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<sup>1</sup> Available at <http://www.uspto.gov/patents-application-process/appealing-patent-decisions/decisions-and-opinions/representative-orders>.

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been denied *pro hac vice* admission in an *inter partes* reexamination proceeding before the Board, but Mr. Niro's declaration stated Mr. Niro had never been denied admission to practice before an administrative body. *See id.* at 3.

On July 14, 2016, Patent Owner filed a renewed Motion for *Pro Hac Vice* Admission of Mr. Niro accompanied by a declaration of Mr. Niro in support of the Motion. Paper 16; Ex. 2001. Petitioner has not opposed the renewed Motion. In his declaration, Mr. Niro explains the circumstances of the Board's denial of his request to appear *pro hac vice* in *Inter Partes* Reexamination Control No. 95/000,514, as required by our representative Order. Ex. 2001 ¶ 3; *see also* Case IPR2013-00639, Paper 7, 4. We find Mr. Niro's declaration (Ex. 2001) accompanying the renewed Motion conforms to the requirements for evidentiary support for a motion for *pro hac vice* admission. *See* Case IPR2013-00639, Paper 7, 3–4.

On this record, we determine that Mr. Niro has sufficient legal and technical qualifications to represent Patent Owner, and that there is a need for Patent Owner to have its counsel who represents it in a related district court case involved in this proceeding. Mot. 4–8; Ex. 2001 ¶ 8.

Accordingly, Patent Owner has established that there is good cause for the *pro hac vice* admission of Mr. Niro in this proceeding.

## II. Order

It is

ORDERED that Patent Owner's renewed Motion for *Pro Hac Vice* Admission of Mr. Raymond P. Niro, Jr. is *granted*, and Mr. Niro is authorized to represent Patent Owner as back-up counsel in IPR2016-00352

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only;

FURTHER ORDERED that Patent Owner is to continue to have a registered practitioner as lead counsel in this *inter partes* review proceeding;

FURTHER ORDERED that Mr. Niro is to comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials, as set forth in Title 37, Part 42 of the Code of Federal Regulations; and

FURTHER ORDERED that Mr. Niro is subject to the Office's disciplinary jurisdiction under 37 C.F.R. § 11.19(a), and the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.*

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