

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION
(d/b/a WABTEC CORPORATION)
Petitioner

v.

SIEMENS INDUSTRY, INC.
Patent Owner

IPR2017-00584
U.S. Patent No. 8,714,494

**MOTION FOR *PRO HAC VICE* ADMISSION
OF MARK M. SUPKO UNDER 37 C.F.R. § 42.10**

Patent Owner respectfully requests that the Board recognize Mark M. Supko as counsel *pro hac vice* for the above-captioned proceeding in accordance with 37 C.F.R. § 42.10(c). The lead counsel, Jeffrey D. Sanok, is a registered practitioner (Reg. No. 32,169).

I. Time for Filing

This Motion for *Pro Hac Vice* Admission is being filed no sooner than twenty-one (21) days after service of the Petition, as required by the Order Authorizing Motion for *Pro Hac Vice* Admission referenced in the Notice of Filing Date entered on January 27, 2017.

II. Statement of Facts

As required by the Order Authorizing Motion for *Pro Hac Vice* Admission, the following statement of facts demonstrates good cause for the Board to recognize Mr. Supko *pro hac vice*.

Mr. Supko is an experienced litigation attorney, and has been involved in numerous litigations involving patent infringement in U.S. District Courts across the country, the U.S. Court of Appeals for the Federal Circuit, the U.S. Court of Federal Claims, and the International Trade Commission. Mr. Supko's biography is attached (Exhibit 2002) to the accompanying Declaration of Mark M. Supko. (Exhibit 2001). As evidenced by Mr. Supko's biography and Declaration, he has

been a litigation attorney for nearly 25 years, and has represented a wide range of clients in patent litigation matters.

U.S. Patent No. 8,714,494 (“the ’494 Patent”) is currently one of thirteen patents being asserted by the Patent Owner against the Petitioner in an infringement suit pending in the U.S. District Court for the District of Delaware, styled *Siemens Industry, Inc. v. Westinghouse Air Brake Technologies Corporation (d/b/a Wabtec Corporation) et al.*, No. 1:16-cv-00284-LPS-CJB (D. Del.) (“the District Court Litigation”). The Patent Owner filed its original Complaint initiating the District Court Litigation on April 21, 2016. Mr. Supko is lead counsel for the Patent Owner in the District Court Litigation, and has served in that role since the beginning of the case.

As a result of his work in connection with the District Court Litigation, Mr. Supko is extremely familiar with the subject matter of the current Petition. For example, Mr. Supko was heavily involved in meetings with engineers and in-house attorneys for the Patent Owner regarding the technology described and claimed in the ’494 Patent and the Petitioner’s allegedly infringing products in advance of filing the original Complaint. He has also been heavily involved in preparing the Patent Owner’s infringement contentions, including underlying analyses of the scope and meaning of the asserted claims of the ’494 Patent and application of those claims to the accused products. Mr. Supko has also been heavily involved in

studying prior art references, specifically including prior art references cited in the Petition, in the context of assessing the Petitioner's invalidity contentions in the District Court Litigation. In addition, Mr. Supko has relevant technical knowledge and experience, having worked as a systems engineer for a major U.S. automaker developing computer-based control systems prior to becoming a lawyer.

Accordingly, Mr. Supko has a well-established familiarity with the subject matter at issue in this proceeding.

Further, the Patent Owner has expended significant time and financial resources in connection with the District Court Litigation with Mr. Supko as lead counsel, and the Patent Owner wishes to continue using Mr. Supko as counsel in this proceeding. Accordingly, the Patent Owner respectfully submits that there is good cause for the Board to recognize Mr. Supko as counsel *pro hac vice* during this proceeding.

III. Affidavit or Declaration of Individual Seeking to Appear

This Motion for *Pro Hac Vice* Admission is accompanied by the Declaration of Mark M. Supko (Exhibit 2001) as required by the Order Authorizing Motion *for Pro Hac Vice* Admission. In this Declaration, Mr. Supko states compliance with the general requirements for *pro hac vice* admission, including that he is a member in good standing of the Bar of the State of New York and the Bar of the District of Columbia, and is admitted to practice before the U.S. Supreme Court, the U.S.

Courts of Appeals for the Federal Circuit and the Second Circuit, five Federal District Courts, and the U.S. Court of Federal Claims. Mr. Supko also states that he has never been suspended, disbarred, sanctioned, or cited for contempt by any court or administrative body; he has never had a court or administrative body deny his application for admission to practice; he has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in Part 42 of Title 37 of the Code of Federal Regulations; he agrees to be subject to the United States Patent and Trademark Office Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a); and in the past three (3) years, he has not applied to appear *pro hac vice* in any proceedings before the United States Patent and Trademark Office (having last been admitted *pro hac vice* as counsel for the petitioner in *BAE Systems Information and Electronic Systems Integration, Inc. v. Cheetah Omni, LLC*, Case IPR2013-00175 (PTAB) on August 1, 2013), but he will be applying to appear *pro hac vice* in a number of pending proceedings at the Office that implicate other of Patent Owner's patents asserted in the District Court Litigation: IPR2017-00580, IPR2017-00581, IPR2017-00582, and IPR2017-00650. In addition, Mr. Supko states that he has familiarity with the subject matter at issue in the *inter partes* review proceeding.

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