

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBAAD MASSUOT YITZHAK, LTD. AND ALBAAD USA, INC.,
Petitioner,

v.

EDGEWELL PERSONAL CARE BRANDS, LLC,
Patent Owner.

Case IPR2017-00694
Patent 6,432,075 B1

Before KEVIN W. CHERRY, JAMES A. WORTH, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

ORDER
*Patent Owner's Motion for
Pro Hac Vice Admission of Jason C. Kravitz
37 C.F.R. § 42.10*

On January 19, 2017, Albaad Massuot Yitzhak, Ltd. and Albaad USA, Inc. (collectively, “Petitioner”) filed a Petition requesting *inter partes* review of claims 1–6 of U.S. Patent No. 6,432,075 (“the ’075 patent”). Paper 2 (“Pet.”). The Petition states that the ’075 patent is “assigned to Edgewell Personal Care Brands, LLC” (“Edgewell”), and identifies Edgewell as the Patent Owner. *Id.* at 1. The Petition also identifies pending district court litigation between Edgewell and Petitioner concerning the ’075 patent. *Id.*

On February 2, 2017, the Patent Trial and Appeal Board mailed a Notice of Filing Date According to Petition, which included a caption identifying Edgewell as the Patent Owner. Paper 3, 1.

On February 9, 2017, counsel for Edgewell filed Mandatory Notices pursuant to 37 C.F.R. § 42.8. Paper 4, 4. This filing identifies Edgewell and Uni-Charm Corp. (“Uni-Charm”) as real parties-in-interest. *Id.* at 2. Specifically, the filing explains that “Uni-Charm is the owner of the ’075 patent. Edgewell is the exclusive licensee of the ’075 patent and has the right and obligation to select and retain counsel to defend the ’075 patent in this *inter partes* review.” *Id.*¹ The filing provides no evidence in support of the assertion that Edgewell is an exclusive licensee with the right to defend the ’075 patent in this proceeding.

On February 10, 2017, counsel for Edgewell filed a Motion for *Pro Hac Vice* Admission of Jason C. Kravitz, supported by the Affidavit of Mr. Kravitz. Papers 6–7.

¹ This filing also modified the caption for this proceeding to identify Uni-Charm, as Patent Owner, and Edgewell, as Exclusive Licensee. *Id.* at 1. The parties are instructed to use the heading on the first page of the Notice of Filing Date Accorded to Petition in this proceeding until the Board makes a determination otherwise.

We have reviewed the submissions and deny Edgewell's Motion for *Pro Hac Vice* Admission of Mr. Kravitz at this time, because the record does not establish that Edgewell has a right to participate in this proceeding.

According to 35 U.S.C. § 313, it is the patent owner, not a licensee, who has the right to participate in *inter partes* review proceedings, e.g., by filing a preliminary response to a petition. In this case, the record before us includes no evidence to support the assertion that Edgewell is an exclusive licensee to the '075 patent, with a right to participate in this proceeding, or that Edgewell is otherwise authorized to act on behalf of the owner of the '075 patent. *See* Pet. 1.² Further, although Petitioner appears to understand Edgewell to have such a right, we have no evidence before us to that effect. *See ZTE (USA), Inc. v. Elec. & Telecomm. Research Instit.*, Case IPR2015-00029, Paper 8 at 2 n.1 (PTAB Jan. 9, 2015) (suggesting exclusive licensee file a power of attorney from record patent owner); *Bio-Rad Labs., Inc. v. Cal. Inst. of Tech.*, Case IPR2015-00009, Paper 9 at 2–4 (PTAB Mar. 6, 2015) (ordering a purported licensee to show cause as to why it is entitled to participate in *inter partes* review proceedings); *NXP Semiconductors USA, Inc. v. Inside Secure*, Case IPR2016-00692, Paper 9 at 2 n.1 (PTAB Sept. 9, 2016) (treating NFCT as Patent Owner, in light of NFCT's representation that it possesses all substantial rights to the challenged patent, which was supported by exhibits containing patent license agreements).³

² We note that the only recorded assignment of the '075 patent is that from the named inventors to Uni-Charm Corp. *See* USPTO Assignments, Reel/Frame 011513/0090, recorded Nov. 8, 2000.

³ If Edgewell wishes to file any license agreements with the record patent owner under seal, it should file a motion to seal with the submission and request entry of a protective order. *See* Office Patent Trial Practice Guide ("Trial Practice Guide"), 77 Fed. Reg. 48,756, 48,760–61 (Aug. 12, 2012)

Therefore, we deny the Motion for *Pro Hac Vice* Admission, filed on behalf of Edgewell, who is not the Patent Owner or otherwise shown to be able to act on behalf of the Patent Owner in this proceeding.

It is:

ORDERED that Patent Owner's Motion for Admission *Pro Hac Vice* of Mr. Kravitz is *denied*;

FURTHER ORDERED that the parties, until further notice, shall use the heading indicated on the Notice of Filing Date Accorded to Petition in this proceeding.

(discussing how parties should handle filing confidential information). The parties should meet and confer about the terms of any protective order. The parties are encouraged to use the default protective order found in Appendix B of the Trial Practice Guide. *See* Trial Practice Guide, 77 Fed. Reg. at 48,769–71 (explaining protective order guidelines and default protective order). If the parties seek any variations from the default protective order, they should submit both a clean version of their proposed protective order and a version showing the modifications that they propose making to the default protective order.

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PETITIONER:

David Loewenstein
dloewenstein@pearlcohen.com

Guy Yonay
guyy@pczlaw.com

PATENT OWNER:

Daniel Burnham
dburnham@nixonpeabody.com