

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LEVITATION ARTS, INC.,  
Petitioner,

v.

FLYTE LLC,  
Patent Owner.

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Case PGR2018-00073  
Patent D799,100 S

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Before JOHN C. KERINS, GRACE KARAFFA OBERMANN, and  
BART A. GERSTENBLITH, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Motion for Admission  
*Pro Hac Vice* of Matthew G. McAndrews  
*37 C.F.R. § 42.10*

On September 6, 2018, Petitioner filed a Motion for admission *pro hac vice* of Matthew G. McAndrews. Paper 7 (“Motion”). Petitioner also filed a Declaration of Mr. McAndrews in support of the Motion. Ex. 1024 (“Declaration”). Patent Owner has not filed an opposition to the Motion. For the reasons provided below, Petitioner’s Motion is *granted*.

Pursuant to 37 C.F.R. § 42.10(c), the Board 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. In its notice authorizing motions for *pro hac vice* admission, the Board requires a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* and an affidavit or declaration of the individual seeking to appear in this proceeding. *See* Paper 5, 2 (citing *Unified Patents, Inc. v. Parallel Iron, LLC*, Case IPR2013-00639 (PTAB Oct. 15, 2013) (Paper 7) (representative “Order – Authorizing Motion for *Pro Hac Vice* Admission”).

Based on the facts set forth in the Motion and the accompanying Declaration, we conclude that Mr. McAndrews has sufficient legal and technical qualifications to represent Petitioner in this proceeding, that Mr. McAndrews has demonstrated sufficient familiarity with the subject matter of this proceeding, and that Petitioner’s intent to be represented by counsel with litigation experience is warranted. Accordingly, Petitioner has established good cause for *pro hac vice* admission of Mr. McAndrews. Mr. McAndrews will be permitted to serve as back-up counsel only. *See* 37 C.F.R. § 42.10(c).

Petitioner provides Power of Attorney for all Practitioners associated with Customer Number 64194. Paper 2. Mr. McAndrews, however, is not associated with Customer Number 64194. Accordingly, Petitioner must submit a Power of Attorney for Mr. McAndrews in accordance with 37 C.F.R. § 42.10(b).

Accordingly, it is:

ORDERED that Petitioner's Motion for *pro hac vice* admission of Mr. Matthew G. McAndrews is *granted*;

FURTHER ORDERED that Petitioner is to continue to have a registered practitioner represent it as lead counsel for this proceeding;

FURTHER ORDERED that Mr. McAndrews is authorized to represent Petitioner only as back-up counsel in this proceeding;

FURTHER ORDERED that Mr. McAndrews is to comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials, as set forth in Part 42 of Title 37, Code of Federal Regulations, as updated by the Office Patent Trial Practice Guide, August 2018 Update, 83 Federal Register 39,989 (Aug. 13, 2018);<sup>1</sup>

FURTHER ORDERED that Mr. McAndrews shall be 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.*;<sup>2</sup>

FURTHER ORDERED that, within seven (7) business days of the date of this Order, Petitioner must submit a Power of Attorney for Mr. McAndrews in this proceeding in accordance with 37 C.F.R. § 42.10(b); and

FURTHER ORDERED that Petitioner shall file an updated Mandatory Notice in this proceeding in accordance with 37 C.F.R. § 42.8(b)(3), identifying Mr. McAndrews as back-up counsel.

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<sup>1</sup> In the Declaration, Mr. McAndrews indicates he will be subject to the Office of Patent Trial Practice Guide, as opposed to the Office Patent Trial Practice Guide. Ex. 1024 ¶ 5. We deem this harmless error.

<sup>2</sup> In the Declaration, Mr. McAndrews indicates he will be subject to the USPTO *Code of Professional Responsibility*, as opposed to the USPTO *Rules of Professional Conduct*. Ex. 1024 ¶ 6. We deem this harmless error.

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For PETITIONER:

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