

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MAN WAH HOLDINGS LIMITED,
Petitioner,

v.

RAFFEL SYSTEMS, LLC,
Patent Owner.

PGR2019-00029
Patent D821,986 S

Before GRACE KARAFFA OBERMANN, CHRISTOPHER G. PAULRAJ,
and RYAN H. FLAX, *Administrative Patent Judges*.

FLAX, Administrative Patent Judge.

ORDER

Denying Without Prejudice Patent Owner's Motion for
Pro Hac Vice Admission of John C. Scheller
37 C.F.R § 42.10

Patent Owner filed a motion requesting *pro hac vice* admission of John C. Scheller in the above-identified proceeding. Paper 18 ("Motion"). The Motion is supported by an "Affidavit of Mr. John C. Scheller in Support of Motion for *Pro Hac Vice* Admission" ("Affidavit"). Petitioner did not file an opposition to the Motion. *See* 37 C.F.R. § 42.25(a)(1). We have

reviewed the submissions and determined that the requirements of 37 C.F.R. § 42.10(c) have not been met and, for the reasons provided below, deny the Motion without prejudice.

The Affidavit includes the language “I, John C. Scheller, being duly sworn and upon oath, hereby attest to the following:” and concludes with a date and signature of the attorney. Affidavit 2–3. The Affidavit, however, is not properly executed.

“Affidavit means affidavit or declaration under § 1.68 of this chapter. A . . . declaration under 28 U.S.C. 1746 may be used as an affidavit.” 37 C.F.R. § 42.2. The reference to “affidavit” invokes the requirements of 37 C.F.R. § 1.66, and the remainder of the definition of “affidavit” invokes the requirements of 37 C.F.R. § 1.68 or 28 U.S.C. § 1746.

Under 37 C.F.R. § 1.66, “[a]n oath or affirmation may be made before any person within the United States authorized by law to administer oaths” and the “oath shall be attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made.” The Affidavit does not include the seal of an officer before whom Mr. Scheller’s oath or affirmation was made, and, thus, the Affidavit does not comply with § 1.66.

Under 37 C.F.R. § 1.68 a party relying upon testimony in the form of a declaration must include a statement in the declaration that “willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon.” 37 C.F.R. § 1.68. A similar statement exists in 28 U.S.C. § 1746 that permits a witness to “declare (or certify, verify, or state) under

penalty of perjury under the laws of the United States of America that the foregoing is true and correct.” 28 U.S.C. § 1746. The Affidavit includes neither of these statements. For all these reasons, we cannot consider the Affidavit as testimonial evidence supporting the Motion. Without such evidence, we deny the Motion without prejudice.

Patent Owner is authorized to file a revised motion for admission *pro hac vice* of John C. Scheller with supporting evidence in the form of an exhibit containing testimony meeting any of the standards discussed above.¹ Patent Owner shall file the revised motion with appropriate supporting evidence within ten (10) business days of the date of this order.^{2, 3}

¹ The Affidavit was included with the Motion instead of being filed separately as an exhibit. The parties are reminded that affidavits and declarations must be filed as exhibits so they may be referenced individually by exhibit number. *See* 37 C.F.R. § 42.63.

² The Affidavit states that Mr. Scheller 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 the C.F.R.” Affidavit ¶ 5. We note, however, that the Office Patent Trial Practice Guide and the Board’s Rules of Practice for Trials are set forth in Part 42 of 37 C.F.R., and it is those rules to which Mr. Scheller would be subject.

³ If Patent Owner decides to file a revised motion for *pro hac vice* admission of Mr. Scheller, Patent Owner is reminded to file a Power of Attorney for Mr. Scheller in accordance with 37 C.F.R. § 42.10(b) and to file an updated mandatory notice in accordance with 37 C.F.R. § 42.8(b)(3) that identifies Mr. Scheller as back-up counsel.

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Accordingly, for the reasons discussed above, it is:

ORDERED that Patent Owner's Motion for *pro hac vice* admission Under 37 C.F.R. § 42.10 in the above-identified proceeding is *denied without prejudice*; and

FURTHER ORDERED that Patent Owner is authorized in the above-captioned proceeding to file a revised motion for *pro hac vice* admission of John C. Scheller along with a supporting exhibit containing testimonial evidence within ten (10) business days of the date of this order.

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