

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIFESCAN GLOBAL CORPORATION  
Petitioner,

v.

IKEDA FOOD RESEARCH, LTD., and PHC CORPORATION  
Patent Owners.

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PGR2019-00032  
Patent 9,976,125 B2

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Before ERICA A. FRANKLIN, ROBERT A. POLLOCK, and  
DAVID COTTA, *Administrative Patent Judges*.

COTTA, *Administrative Patent Judge*.

DECISION

Contingently Granting Petitioners' Motion for Withdrawal and Substitution  
of Counsel

37 C.F.R. § 42.10

On Monday January 13, 2019, Petitioner emailed the Board to request authorization to file a motion to withdraw current counsel and substitute new counsel. Ex. 3001. On the same day, we responded by email authorizing Petitioner to file the requested motion. *Id.* We stated that we would issue an order to this effect in due course. *Id.*

On January 14, 2020, with our prior authorization, Counsel for LifeScan Global Corporation (“Petitioner”) filed a motion “TO WITHDRAW AND SUBSTITUTE COUNSEL.” Paper 20 (“Motion”). The Motion requests that “Robert Tosti (lead counsel) and Daniel Palmer (back-up counsel),” of Brown Rudnick, LLP be permitted to withdraw from the proceedings, and further requests that “Brian R. Tomkins (Registration No. 58,550) and Aaron S. Eckenthal (Registration No. 58,891) of Lerner, David, Littenberg, Krumholz & Mentlik, LLP [] be designated as lead and back-up counsel,” for Petitioner. Motion 1. Although Petitioner attests that “[a]n executed updated Power of Attorney and Updated Mandatory Notices Under 37 C.F.R. §42.8(a)(3) are being filed concurrently” (*id.* at 2), the updated Power of Attorney and Mandatory Notices have not yet been filed. Petitioner represents that new lead counsel, Brian R. Tomkins, and new back-up counsel, Aaron S. Eckenthal, meet the requirements of 37 C.F.R. § 42.10(a) as registered practitioners. *Id.* at 1. Additionally, Petitioner indicates that Patent Owner does not object, and asserts that this Motion “will not hinder the economy, the integrity of the patent system, the efficient administration of the Office, or the ability of the Office to timely complete this proceeding.” *Id.* at 1–2.

In consideration of the foregoing, it is hereby

ORDERED that Petitioner shall file a Power of Attorney appointing Brian R. Tomkins and Aaron S. Eckenthal as counsel in this proceeding within five (5) days of the issuance of this order in accordance with 37 C.F.R. § 42.10(b);

FURTHER ORDERED that Petitioner shall file an updated mandatory notice identifying Brian R. Tomkins and Aaron S. Eckenthal as counsel in this proceeding within five (5) days of the issuance of this order in accordance with 37 C.F.R. § 42.8(b)(3);

FURTHER ORDERED that Petitioner's Motion to Withdraw and Substitute Counsel is *granted*, contingent upon Petitioner filing a Power of Attorney appointing Brian R. Tomkins and Aaron S. Eckenthal as counsel in this proceeding; and

FURTHER ORDERED that upon Petitioner's filing of a Power of Attorney appointing Brian R. Tomkins and Aaron S. Eckenthal as counsel in this proceeding, Robert Tosti and Daniel Palmer shall be deemed to have withdrawn from this proceeding.

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Patent 9,976,125 B2

For PETITIONER:

Robert Tosti  
Daniel Palmer  
Brown Rudnick LLP  
rtosti@brownrudnick.com  
dpalmer@brownrudnick.com

Brian R. Tomkins  
Aaron S. Eckenthal  
Lerner, David, Littenberg, Krumholz & Mentlik, LLP

For PATENT OWNER:

Kenneth George  
Brian Comack  
Amster, Rothstein & Ebenstein LLP  
kgeorge@arelaw.com  
bcomack@arelaw.com