

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Google Inc.
Petitioner

v.

Visual Real Estate, Inc.
Patent Owner

Case IPR2014-01341
Patent 8,078,396

**PETITIONER'S MOTION FOR *PRO HAC VICE* ADMISSION OF DAVID S.
ALMELING UNDER 37 C.F.R. § 42.10(c)**

EXHIBIT LIST

Patent Owner	Exhibit Description
GOOGLE1001	Declaration of Dr. Fuchs
GOOGLE1002	U.S. Patent No. 8,078,396 (“the ’396 patent”)
GOOGLE1003	Select Prosecution History of the ’396 patent (Serial No. 12/035,423)
GOOGLE1004	“An Automated Method for Large-Scale, Ground-Based City Model Acquisition” by Früh et al. (October 2004) (“Fruh”)
GOOGLE1005	U.S. Patent No. 6,895,126 to Di Bernardo et al. (“Di Bernardo”)
GOOGLE1006	“Towards Urban 3D Reconstruction From Video” by Akbarzadeh et al. (June 14, 2006) (“Akbarzadeh”)
GOOGLE1007	U.S. Patent 7,929,800 to Meadows et al. (Application No. 11/702,708)
GOOGLE1008	U.S. Publication No. 2008/0189031 to Meadows et al. (Application No. 11/702,707)
GOOGLE1009	Exhibit C to VRE’s Disclosure of Asserted Claims and Infringement Contentions for U.S. Patent No. 8,078,396
GOOGLE1010	U.S. Patent 7,389,181 to Meadows et al. (Application No. 11/216,465)
GOOGLE1011	Declaration of David Almeling in Support of Pro Hac Vice Admission

Pursuant to 37 C.F.R. § 42.10(c), Petitioner Google Inc. (“Petitioner” or “Google”) respectfully requests that the Board recognize David S. Almeling as counsel *pro hac vice* in this proceeding. In this case, where the lead counsel is a registered practitioner, a non-registered practitioner may be permitted to appear *pro hac vice* “upon a showing that counsel is an experienced litigating attorney and has established familiarity with the subject matter at issue in the proceeding.” 37 C.F.R. § 42.10(c); *Unified Patents, Inc. v. Parallel Iron, LLC*, Case IPR2013-00639 (PTAB Oct. 15, 2013) (Paper 7) (setting forth requirements for *pro hac vice* admission). As set forth in his Declaration submitted herewith (Ex. 1011), Mr. Almeling is a Partner at O’Melveny & Myers LLP and a patent litigation attorney with significant experience advising clients regarding patent matters, including as *pro hac vice* counsel in separate IPR proceedings involving Petitioner and similar technology. Mr. Almeling also represents Petitioner in connection with the underlying district court litigation on the patent at issue in this *inter partes* review proceeding, U.S. Patent No. 8,078,396 (“396 Patent”). Based on this underlying litigation and the other facts detailed below and in his declaration, Mr. Almeling has significant familiarity with the subject matter in this proceeding. This motion is authorized by the Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response that was mailed on September 2, 2014 (Paper No. 3).

Statement of Facts

As detailed in his declaration, Mr. Almeling practices litigation, primarily patent infringement litigation, and has done so throughout his career as an attorney. He has litigated dozens of patent cases across the country, including in California, Delaware, Florida, Nevada, Pennsylvania, Texas, Washington, and Wisconsin.

Petitioner requests that the Board recognize Mr. Almeling as counsel *pro hac vice* because Mr. Almeling serves a unique and critical role for Petitioner regarding this *inter partes* review proceeding and Mr. Almeling has substantial experience and expertise representing Petitioner regarding patents involving the applicable Geographical Information Systems (“GIS”), graphics, and navigation technology.

Mr. Almeling represents the Petitioner in the concurrent litigation involving U.S. Patent No. 7,389,181 (’181 Patent) (*Visual Real Estate, Inc. v. Google, Inc.*, Case No. 3:14-cv-274-J-32JRK (M.D. Fla.)) and U.S. Patent Nos. 7,929,800 (“’800 Patent”) and 8,078,396 (“’396 Patent”), which claim priority to the ’181 Patent. Google has expended significant financial resources in the underlying district court litigation. Mr. Almeling’s knowledge of these litigation matters is important for purposes of this proceeding for several reasons, including ensuring consistency between Petitioner’s position in those matters and in this proceeding. Mr. Almeling has extensively reviewed the ’181 Patent, ’800 Patent, and ’396 Patent and gained significant familiarity with the claim construction issues in the concurrent litigation, which significantly overlap with the corresponding issues in this *inter partes* review

proceeding involving the '396 Patent, as well as the three other related proceedings involving these three patents in Case Nos. IPR2014-01338, IPR2014-01339, and IPR2014-01340. Additionally, the Petition in this *inter partes* review proceeding and the related proceedings cited to and relied on the Patent Owner's infringement contentions from the concurrent litigation matters included as exhibit GOOGLE1009, as those contentions are critical to understanding Patent Owner's asserted interpretation of the applicable claims for the '181 Patent, '800 Patent, and '396 Patent. Mr. Almeling has significant familiarity with these contentions and other submissions from the concurrent litigation that may be relevant to this *inter partes* review proceeding.

Moreover, Mr. Almeling's work has resulted in a detailed review of the Petition for *Inter Partes* Review (including the proposed invalidity grounds therein, the cited references, and exhibits), the Declaration of Dr. Henry Fuchs, and the Board's Decision instituting *Inter Partes* Review of the '396 Patent. Mr. Almeling was also involved in identifying and retaining Dr. Fuchs as an expert in this IPR, he signed his engagement letter, and he conferred with Dr. Fuchs during Dr. Fuchs' work on his declaration. Additionally, Mr. Almeling has served an essential role in all areas of this *inter partes* review proceeding, including: analyzing each of the prior art references and the intrinsic record; advising Petitioner on strategy regarding Petitioner's affirmative arguments and Petitioner's counterarguments to the Patent

Owner's positions; and working with the present Lead and Backup Counsel in this *inter partes* review proceeding to draft the Petition and other submissions. Mr. Almeling thus has a detailed understanding of the '396 Patent and the substantive and technical issues involved in this proceeding.

Finally, Mr. Almeling's substantial experience and expertise with the relevant GIS, graphics, and navigation technologies is unmatched and makes him uniquely positioned to represent Petitioner in this *inter partes* review proceeding. Mr. Almeling's expertise with the technical subject matter of this *inter partes* review proceeding extends beyond his involvement with the Petition and other submissions in this *inter partes* review proceeding and the concurrent litigation matters. Mr. Almeling also represents Petitioner in connection with many other patent litigations, reexaminations, and *inter partes* review proceedings regarding GIS, graphics, and navigation technologies. He describes six separate sets of proceedings in paragraph 7 of his declaration. In one of those matters, Mr. Almeling was recently admitted as counsel *pro hac vice* in three *inter partes* review proceedings on behalf of Petitioner involving GIS and graphics technology similar to that at issue in this proceeding (IPR2014-00532, IPR2014-00533, and IPR2014-00534). In another of those proceedings, Mr. Almeling is litigating (*Vederi, LLC v. Google Inc.*, Case No. 2:10-cv-07747 (C.D. Cal.)) and participating in reexamination proceedings (Control Nos. 95/000,681, 95/000,682, 95/000,683, and 95/000,684) related to patents from

the same family as the Di Bernardo publication (Ex. 1005), which is a prior art publication at issue in this proceeding. As set forth in his Declaration submitted herewith (Ex. 1011), Mr. Almeling also describes all his previous requests, over the last three years, to appear *pro hac vice* before the Office.

Based on this substantial experience described in the previous paragraph, Mr. Almeling has developed an in-depth knowledge of the issues and technology within GIS, graphics, and navigation technologies. This knowledge includes his analysis of a significant number of patents, articles, books, software programs, products, industry conference proceedings, and other materials regarding GIS, graphics, and navigation technologies. He has used this knowledge on behalf of Petitioner to help prepare invalidity contentions, expert reports on invalidity, requests for *inter partes* reexamination, and petitions for *inter partes* review. Mr. Almeling's GIS and navigation knowledge also includes knowledge gained from working closely with several GIS, graphics, and navigation experts from academia and industry, both as expert witnesses in litigation and as declarants in reexaminations and *inter partes* review. He has taken and defended more than a half-dozen expert depositions in litigation and in *inter partes* review proceedings regarding GIS, graphics, and navigation technologies, including depositions regarding invalidity. Mr. Almeling has also taken and defended more than a half-dozen factual depositions regarding GIS, graphics, and navigation technologies, including taking depositions of named

inventors of GIS, graphics, and navigation patents and defending depositions of Petitioner's engineers. He has also subpoenaed and coordinated with numerous GIS companies, including working with their employees and reviewing their document productions. And his GIS, graphics, and navigation knowledge includes his dozens of meetings with Petitioner's engineers regarding its GIS, graphics, and navigation products.

If the Board denies the present Motion, not only is Petitioner denied its choice of counselors (including Mr. Almeling), but Petitioner would also be prejudiced by having to undertake the burdensome task—at great cost—to prepare another attorney to replace Mr. Almeling's specific combination of familiarity with the concurrent litigation, the '396 Patent, the asserted prior art references, and the relevant GIS, graphics, and navigation technologies.

Petitioner repeatedly retains Mr. Almeling and his colleagues regarding disputes involving GIS, graphics, and navigation-related patents to provide continuity across cases involving related technologies, and thus Petitioner would be prejudiced if Mr. Almeling could not fully represent Petitioner. Accordingly, Petitioner respectfully requests that the Board avoid that prejudice and grant this Motion.

Declaration of Individual Seeking to Appear

This Motion for *Pro Hac Vice* Admission is accompanied by the Declaration of David Almeling (Ex. 1011), as required by the "Order Authorizing Motion for Pro Hac

Vice Admission” in Case IPR2013-00639, Paper 7, a copy of which is available on the Board Web site under “Representative Orders, Decisions, and Notices.”

As Mr. Almeling stated in his accompanying Declaration, he has read, will comply with, and agrees to be subject to the Office Patent Trial Practice Guide and the Board’s Rules of Practice for Trials set forth in part 42 of the Code of Federal Regulations. As also set forth in his Declaration, Mr. Almeling is a member in good standing of the Bar of the State of California and is admitted to practice in numerous federal courts, including the U.S. District Court for each of the four districts in California, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Supreme Court. He has litigated dozens of patent cases across the country. He frequently publishes and presents CLE programs on issues concerning patent law and trade secret law. Mr. Almeling’s complete biography is attached hereto as Appendix A.

Petitioner submits that there is good cause under 37 C.F.R. § 42.10(c) for the Board to recognize David S. Almeling as counsel *pro hac vice* during this proceeding.

Respectfully submitted,

Date: March 6, 2015

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on March 6, 2015, a complete and entire copy of this Petitioner's Motion for Pro Hac Vice Admission of David S. Almeling Under 37 C.F.R. § 42.10(c) was provided via email to the Patent Owner by serving the correspondence email addresses of record as follows:

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