

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,

Petitioner

v.

VIRNETX, INC.,

Patent Owner

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Case IPR2015-00812

Patent 8,850,009

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**PETITIONER'S MOTION FOR ADMISSION *PRO HAC VICE* OF  
SCOTT M. BORDER PURSUANT TO 37 C.F.R. § 42.10(c)**

Petitioner, Apple Inc. (“Apple”) respectfully requests that the Board recognize Scott M. Border, Esq. as *pro hac vice* counsel for this proceeding.

## **I. BACKGROUND**

Apple’s Motion for *Pro Hac Vice* Admission is being filed pursuant to and in compliance with the Notice of Filing Date Accorded to Petition and Time Period for Filing Patent Owner Preliminary Response, which was filed March 13, 2015 (Paper 3) (the “Notice”). The Notice authorizes the parties to file motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c). Further to the Notice, such “motions shall be filed in accordance with the ‘Order – Authorizing Motion for *Pro Hac Vice* Admission’ in Case IPR2013-00639 ” (the “Order”).

## **II. TIME OF FILING**

This Motion for *Pro Hac Vice* admission is being filed in accordance with the Notice Authorizing the Filing of a Motion for *Pro Hac Vice* admission, and is filed greater than 21 days after that Notice.

## **III. STATEMENT OF FACTS**

As required by the Order, the following statement of facts, supported by the attached Declaration of Scott M. Border in Support of Motion for *Pro Hac Vice* Admission (“Border Decl.”), shows that there is good cause for the Patent Trial and Appeal Board (“Board”) to recognize Mr. Border *pro hac vice* in this proceeding. As required by 37 C.F.R. § 42.10(c), lead counsel, Jeffrey P. Kushan,

is a registered practitioner experienced in proceedings before the USPTO.

Mr. Border is an experienced litigation attorney. Mr. Border has been a litigating attorney for more than seven years, and has been involved in numerous patent litigation cases in federal courts and matters before the Board. Mr. Border's experience includes representing a wide range of clients in complex intellectual property litigation, and he has appeared as counsel for Apple in a number of litigation matters before the International Trade Commission, and various District Courts. Mr. Border has also appeared *pro hac vice* in other matters before the Board.<sup>1</sup> Mr. Border is a member in good standing of the Virginia State Bar and the District of Columbia Bar, with no suspensions or disbarments from practice, nor any application for admission to practice denied, nor any sanctions or contempt citations, and is admitted to practice in the United States Court of Appeals for the Federal Circuit, as well as the United States District Courts for the Northern District of Florida, Eastern District of Texas, and Eastern District of Virginia. His mailing address is at Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, his email address is sborder@sidley.com, and his direct dial is (202) 736-8818.

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<sup>1</sup> Mr. Border was admitted *pro hac vice* in IPR2013-00292, IPR2014-00039, IPR2014-00040, IPR2014-00481, IPR2014-00482, and IPR2015-00074.

Mr. Border has worked with lead counsel in most aspects of this proceeding. As such, Mr. Border has reviewed and is very familiar with (i) U.S. Patent No. 8,850,009, the patent at issue in this proceeding, (ii) the prior art relied upon in Apple's Petition, (iii) the legal and factual arguments that have been addressed by Apple, and (iv) the developments in this proceeding since the filing of Apple's Petition, as well as the developments in related matters before the Board. Mr. Border has also been involved in a number of other proceedings before the Board, has been admitted *pro hac vice* as backup counsel in other matters before the Board, and is familiar with its established practices. Accordingly, he has established familiarity with the subject matter at issue in these proceedings and the conduct of these proceedings to date.

Mr. Border has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules for Practice for Trials set forth in part 42 of 37 C.F.R., and he agrees to be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§11.01 *et seq.*, and to disciplinary jurisdiction under 37 C.F.R. §11.19(a).

#### **IV. ANALYSIS**

The facts contained in the Statement of Facts above, and contained in the Border Declaration, establish that there is good cause to admit Mr. Border *pro hac vice* in this proceeding under 37 C.F.R. § 42.10(c). Lead counsel is a registered

practitioner, Mr. Border is an experienced litigating attorney, and Mr. Border has an established familiarity with the subject matter at issue in these proceedings.

## **V. CONCLUSION**

Therefore, Apple respectfully submits that there is good cause for the Board to recognize Mr. Border as *Pro Hac Vice* during these proceedings.

Apple's Motion for *Pro Hac Vice* Admission is accompanied by a Declaration of Scott M. Border as required by the Order.

Dated: September 18, 2015

Respectfully submitted,

/Jeffrey P. Kushan/

Jeffrey P. Kushan

Reg. No. 43,401

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*Attorney for Petitioner*

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**DECLARATION OF SCOTT M. BORDER IN SUPPORT OF MOTION  
FOR *PRO HAC VICE* ADMISSION**

I, Scott M. Border, being duly sworn and upon oath, hereby attest to the following:

1. I am a member in good standing of the Bar of the State of Virginia and the District of Columbia.
2. I have not been suspended or disbarred from practice before any court or administrative body.
3. I have never had an application for admission to practice before any court or administrative body denied.
4. No sanctions or contempt citations has been imposed against me by any court or administrative body.
5. I have 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 37 C.F.R.
6. I will be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).
7. I have applied to appear *pro hac vice* and have been granted permission to appear *pro hac vice* before the Office in six proceedings in the last three (3) years. *See* IPR2013-00292, IPR2014-00039, IPR2014-00040, IPR2014-00481, IPR2014-00482, and IPR2015-00074.

8. I am an experienced litigation attorney, with 7 years of experience litigating patent cases in federal courts. My experience includes representing a wide range of clients in complex intellectual property litigation. I have appeared as counsel for Apple in a number of litigation matters over the span of my career.

9. I have worked with lead counsel in most aspects of his participation in this proceeding. As such, I have reviewed and am very familiar with (i) U.S. Patent No. 8,850,009 the patent at issue in this matter, (ii) the prior art relied upon in Apple's Petition, (iii) the legal and factual arguments made by Apple, and (iv) the developments in this proceeding after the filing of Apple's Petition as well as the developments in related matters before the Board. I have also been involved in a number of other proceedings before the Board and I am familiar with its established practices.

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: September 18, 2015



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Scott M. Border



**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on this 18th day of September, 2015, a true and correct copy of the foregoing **Petitioner's Motion for *Pro Hac Vice* Admission of Scott M. Border Under 37 C.F.R. § 42.10 (and accompanying Declaration of Scott M. Border)** was served by electronic mail on the following counsel for Patent Owner:

Joseph E. Palys  
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Naveen Modi  
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Dated: September 18, 2015

Respectfully submitted,

/Jeffrey P. Kushan/  
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