

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCO Brands Corporation and
ACCO Brands USA LLC
Petitioners

v.

Think Products, Inc.
Patent Owner

Case IPR2015-01167
Patent 8,717,758

**PETITIONER MOTION FOR *PRO HAC VICE*
ADMISSION OF THOMAS L. DUSTON**

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ADMISSION OF THOMAS L. DUSTON**

I. Requested Relief

Pursuant to 37 C.F.R. § 42.10 and the Board's "Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response," (Paper No. 4), dated May 6, 2015, the petitioner requests the Board to admit Thomas L. Duston *pro hac vice* in this proceeding.

II. Statement of Facts Showing Good Cause for the Requested Relief

The Board may recognize counsel *pro hac vice* during an *inter partes* review proceeding upon a showing of good cause, subject to the condition that lead counsel be a registered practitioner and to any other conditions the Board may impose. *See* 37 C.F.R. § 42.10(c). Where "lead counsel is a registered practitioner, a motion to appear *pro hac vice* by counsel who is not a registered practitioner may be granted upon a showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding."

Id. The petitioner respectfully submits that the following facts establish good cause for the Board to recognize Mr. Duston *pro hac vice* during this proceeding:

1. Lead counsel, Michael R. Weiner, is a registered practitioner.
2. Back-up counsel, Sandip H. Patel, is a registered practitioner.
3. Accompanying this motion is the Declaration of Thomas L. Duston.

Ex. 1022.

4. Mr. Duston is a partner at the law firm of Marshall, Gerstein & Borun LLP. Exh. 1022, at ¶ 1.
5. Mr. Duston has been practicing in the field intellectual property, and particularly patent litigation, for more than twenty-seven years. Exh. 1022, at ¶ 2.
6. Mr. Duston is a member in good standing of the Bar of the State of Illinois, and is admitted to practice before the United States Court of Appeals for the Federal Circuit, United States Court of Appeals for the Seventh Circuit, as well as the United States District Court for the Northern District of Illinois and the United States District Court for the Eastern District of Texas, and is also admitted to practice *pro hac vice* in a number of other Federal District courts. Exh. 1022, at ¶ 3.
7. Mr. Duston has never been suspended or disbarred from practice before any court or administrative body. Exh. 1022, at ¶ 4.
8. Mr. Duston has never had an application for admission to practice before any court or administrative body denied. Exh. 1022, at ¶ 5.
9. Mr. Duston has never had sanctions or contempt citations imposed upon him by any court or administrative body. Exh. 1022, at ¶ 6.

10. Mr. Duston is a member of the American Bar Association, the Intellectual Property Owners Association, the Chicago Bar Association, the Eastern District of Texas Bar Association, and the Seventh Circuit Bar Association. Exh. 1022, at ¶ 7.
11. Mr. Duston 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 Code of Federal Regulations. Exh. 1022, at ¶ 8.
12. Mr. Duston has read and will abide by and be subject to the U.S. Patent and Trademark Office Code of Professional Responsibility set forth in 37 C.F.R. § 11.101 *et. seq.* and the Office's disciplinary jurisdiction under 37 C.F.R. § 11.19(a). Exh. 1022, at ¶ 9.
13. Mr. Duston has been admitted *pro hac vice* before the Office during the past three years in the following inter partes review proceedings in the Groupon, Inc. v. Online News Link LLC, Case IPR2014-01326 regarding U.S. Patent No. 7,181,758, Case IPR2014-01327 regarding U.S. Patent No. 8,457,545, and Case IPR2014-01328 regarding U.S. Patent No. 7,508,789. Mr. Duston is also concurrently seeking admission *pro hac vice* in *inter partes* review proceeding IPR2015-01168 regarding U.S. Patent No. 8,837,144, which proceeding is pending before the Board. Exh. 1022, at ¶ 10.

14. Mr. Duston is an experienced litigating attorney and is familiar with the subject matter at issue in the proceeding. He is lead counsel in concurrent litigation involving the same patent as that challenged in this proceeding. That litigation is captioned *Think Products, Inc. v. ACCO Brands Corporation and ACCO Brands USA LLC*, Civil Action No. 2:14-cv-06659 (E.D. NY). He has read the patent at issue in this proceeding, its file history, and the Petition in IPR2015-01167. Exh. 1022, at ¶ 11.
15. Further, in his declaration, Mr. Duston attests to each of the listed items required by 37 C.F.R. § 42.10(c). *See* Exh. 1022, at ¶¶ 1-12.

In the view of the foregoing, the petitioner respectfully submits that Mr. Duston has sufficient legal and technical qualifications to represent the petitioner in this proceeding. Further, the petitioner respectfully submits that it has a need for its lead counsel in the related litigation to be involved in this proceeding.

III. Conclusion

For the foregoing reasons, petitioner respectfully requests the Board to admit Mr. Duston *pro hac vice* in this proceeding.

Respectfully submitted,

May 29, 2015

/Michael R. Weiner #38,359/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 29, 2015, pursuant to 37 CFR §§ 42.6(b)(1) and (e), a copy of the foregoing “PETITIONER MOTION FOR *PRO HAC VICE* ADMISSION OF THOMAS L. DUSTON” and Exh.1022 thereto are being electronically filed via the Patent Review Processing System (PRPS), and are being served via electronic mail on counsel for the Patent Owner as follows:

aferraro@martinferraro.com and
docketing@martinferraro.com.

The undersigned hereby certifies that, pursuant to 37 CFR §§ 42.6(e) and 42.105(a), a copy of the foregoing “PETITIONER MOTION FOR *PRO HAC VICE* ADMISSION OF THOMAS L. DUSTON” and Exh. 1022 thereto are being deposited on May 29, 2015, with FedEx Express for overnight delivery, shipping charges paid (Label No.8638 4177 5429) addressed to:

ALFRED M. WALKER and JOHN VODOPIA
225 OLD COUNTRY ROAD
MELVILLE, NY 11747-2712

which is the correspondence address of record (37 CFR § 1.33(c)) indicated in the Patent Office’s public PAIR system for U.S. Patent No. 8,717,758.

/ Michael R. Weiner #38,359 /

Michael R. Weiner
MARSHALL, GERSTEIN & BORUN LLP