

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VF OUTDOOR, LLC,  
Petitioner,

v.

COCONA, INC.,  
Patent Owner.

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Case No.: IPR2018-00190  
Patent No.: 8,945,287

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

**RELIEF REQUESTED**

Under 37 C.F.R. § 42.10(c), and in accordance with the Board’s “Order – Authorizing Motion for *Pro Hac Vice* Admission” in case IPR2013-00639, Petitioner VF Outdoor, LLC, requests that the Board admit Peter A. Gergely *pro hac vice* in this proceeding.

**GOVERNING LAWS, RULES, AND PRECEDENT**

Section 42.10(c) provides the “Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause, subject to the condition that lead counsel be a registered practitioner and any other conditions as the Board may impose.” The Rule provides that a motion relating to counsel who is not a recognized practitioner “may be granted upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.”

The Board’s December 7, 2017 Notice of Filing Date Accorded to Petition, Paper No. 5, authorized the parties to file motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c). The Notice provided *pro hac vice* motions shall be filed in accordance with the “Order – Authorizing Motion for *Pro Hac Vice* Admission” in Case IPR2013-00639. On October 15, 2013, the Board issued an Order, Paper No. 7, in Case IPR2013-00639 that provides the guidelines for admission under 37 C.F.R. § 42.10(c). The Order incorporated changes in the rules, including the

publication of the Final Rule in 78 Fed. Reg. 20180 adopting new Rules of Professional Conduct.

The October 15, 2013 Order provides that motions for *pro hac vice* must “[c]ontain a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* during the proceeding.” The Order further provides the motion is to be “accompanied by an affidavit or declaration of the individual seeking to appear attesting to the following:

- i. Membership in good standing of the Bar of at least one State or the District of Columbia;
- ii. No suspensions or disbarments from practice before any court or administrative body;
- iii. No application for admission to practice before any court or administrative body ever denied;
- iv. No sanctions or contempt citations imposed by any court or administrative body;
- v. The individual seeking to appear 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 37 C.F.R.;

- vi. The individual 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);
- vii. All other proceedings before the Office for which the individual has applied to appear *pro hac vice* in the last three (3) years; and
- viii. Familiarity with the subject matter at issue in the proceeding.”

#### **TIME OF FILING**

In accordance with the rules, this motion is being filed no sooner than twenty one (21) days after service of the petition.

#### **STATEMENT OF THE FACTS**

The following facts, supported by the attached Declaration of Peter A. Gergely in Support of Petitioner’s Motion for Admission *Pro Hac Vice*, establish good cause to recognize Mr. Gergely *pro hac vice* in this proceeding. Petitioner’s lead counsel, Marianne Timm-Schreiber, is a registered practitioner (Reg. No. 58,085).

Counsel Peter A. Gergely is an experienced litigating attorney. Mr. Gergely is a partner in the law firm of Merchant & Gould P.C. Mr. Gergely has practiced litigation for more than twenty-three (23) years. Gergely Decl., ¶ 8. His experience includes representing a wide range of clients in intellectual property litigation. Mr.

Gergely has been litigating patent cases almost exclusively for the last fourteen (14) years. *Id.*

Mr. Gergely has established familiarity with the subject matter at issue in this proceeding. Mr. Gergely has worked with lead counsel in all aspects of preparing Petitioner's Petition, the expert declaration filed in support of the Petition, and all other filings Petitioner has made. *Id.*, ¶ 9. As such, Mr. Gergely has become familiar with U.S. Patent No. 8,945,287 ("the '287 Patent") and with its prosecution history. *Id.* He is familiar with the prior art relied upon in Petitioner's Petition. He is also familiar with the legal and factual arguments made by Petitioner. *Id.* Mr. Gergely has worked extensively with the expert in this proceeding, which required developing a thorough understanding of the prior art as well as the patent at issue. *Id.*

Mr. Gergely is in good standing and admitted to practice before the Colorado State Bar, the United States District Court for the District of Colorado, the United States District Court for the Eastern District of Texas, the United States Court of Appeals for the Federal Circuit and the United States Supreme Court. Mr. Gergely is also a member of the Massachusetts State Bar (inactive status). Gergely Decl., ¶ 1.

Mr. Gergely has had no suspensions or disbarments from practice before any court or administrative body. *Id.*, ¶ 2.

Mr. Gergely has never been denied application to practice before any court or administrative body. *Id.*, ¶ 3.

Mr. Gergely has never been sanctioned or cited for contempt by any court or administrative body. *Id.*, ¶ 4.

Mr. Gergely 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 37 C.F.R. *Id.*, ¶ 5.

Mr. Gergely has agreed to be subject to the United States Patent and Trademark Office Rules of Professional Conduct, as set forth in 37 C.F.R. §§ 11.101 *et. seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a). *Id.*, ¶ 6.

Mr. Gergely has previously been granted admission to appear *pro hac* before the Office in proceeding No. IPR2015-01776, No. IPR2015-01780, and No. IPR2015-01785. *Id.*, ¶ 7.

#### ANALYSIS

37 C.F.R. § 42.10(c) states that the “Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause, subject to the condition that lead counsel be a registered practitioner and to any other conditions as the Board may impose.” For example, where the 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 showing that counsel is an experienced litigating

attorney and has an established familiarity with the subject matter at issue in the proceeding.” The “Order – Authorizing Motion for Pro Hac Vice Admission” in Case IPR2013-00639 clarified the requirements for a motion for *pro hac vice* admission under 37 C.F.R. § 42.10(c).

The above-identified facts and the Gergely Declaration establish that there is good cause to admit Mr. Gergely *pro hac vice* in this proceeding under 37 C.F.R. § 42.10(c). Lead counsel, Marianne Timm-Schreiber, is a registered practitioner. Mr. Gergely is an attorney with over thirteen (13) years of patent experience. Mr. Gergely has established familiarity with the subject matter at issue in the proceeding. Admission of Mr. Gergely will further enable Petitioner to be effectively and efficiently represented before the Board in this proceeding. Mr. Gergely, in turn, will ensure that he follows the rules and guidelines set out by the Board.

#### **CONCLUSION**

For the reasons stated above, Petitioner respectfully requests that the Board admit Peter A. Gergely to appear *pro hac vice* in this proceeding.

MERCHANT & GOULD, P.C.

Respectfully submitted,

Date: December 8, 2017

By: /s/ Marianne R. Timm-Schreiber

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