

From: Oliver, Justin [mailto:JOliver@fchs.com]
Sent: Monday, December 22, 2014 11:27 AM
To: Brian Buchheit
Cc: DeLucia, Frank
Subject: RE: Petition Real Party of Interest Question

Brian,

Regarding your inquiry concerning the real-party-in interest ("RPI") in the present IPRs, please be advised that no other entity (i) suggested the patents that Askeladden has challenged in any of the IPRs, or (ii) had any control over the drafting, content, or other details of the IPR filings. In addition, none of the other entities you identify has sought to circumvent a time bar for filing the IPRs. For these reasons, none of the other entities is a RPI.

More specifically, the Patent Quality Initiative is not a legal entity, but rather the name of Askeladden's initiative for promoting patent quality. Further, none of the other entities identified in your email have acted in any way that would qualify them as a RPI consistent with the Board's guidance in the cited *RPX* decision, which relied on *Taylor v. Sturgell*, 553 U.S. 880 (2008) and *In re Guan*, Reexam Control No. 95/001,045. First, none of the identified entities is a party that seeks to avoid the preclusive force of a previous judgment by using a nominal party in a subsequent case. Second, none of the other entities suggested that any patent be the subject of the pending IPRs. Third, with respect to The Clearing House Payments Company specifically, in contrast to Apple's position in the RPX case, it has no specific interest in invalidating the patents at issue because it does not engage in any loyalty discount activities. Fourth, none of the identified entities are time barred from filing their own IPRs against the patents.

Accordingly, under *RPX*, and all other applicable authority, none of the other entities can be considered a RPI in connection with the pending IPRs and we have no legal basis to name any other entity as a RPI.

We trust this resolves your inquiry concerning the RPI issue.

Justin

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