

From: Brian Buchheit [<mailto:brian.buchheit@patentsondemand.com>]
Sent: Wednesday, December 31, 2014 10:44 AM
To: Oliver, Justin; #AskeladdenIPR
Cc: Sean McGhie
Subject: RE: Petition Real Party of Interest Question

Justin,

Thank you. I appreciate your position and believe I understand it. For clarity, I intend to bring this issue up to the Board in the Petition Response to get a resolution on the issues in contention with regard to the RPI. In doing so, I intend to present this email as an exhibit that provides evidence of attempts from the Patent Owners to cooperate with the Petitioners – and as evidence of the extent that the Petitioners did willingly cooperate. This cooperation is again, highly appreciated.

As previously noted, the undersigned is responding pro-se and does not have extensive experience in IPR matters, or at least not as extensive as you do as counsel for Askeladden. In this light, I do appreciate your patience with me and apologize for any off-point questions, which are only intended to resolve an issue that the Patent Owners believes is legally relevant to the IPRs.

In this light, is it fair to say (in my response to the petition) that:

The following are facts that the Patent Owners and Petitioner are in agreement in regards to:

- Patent Owners have questions regarding whether concurrent employment of key positions between the two companies (TCH and Askeladden) has resulted in a possibility from the Patent Owner's perspective of a suggestion drifting across company barriers.
- The Petitioner asserts that the companies are legally separate entities and that from their perspective that is sufficient separation that results in the Clearing House Petitioner's position is that Payments Company (TCH) not being a real party of interest (or any other entities receiving service from TCH) for purposes of the IPRs.
- The Patent Owners and Petitioners are in agreement that the two companies are legally separate entities

The following steps have been taken and the below is a fair representation of those steps and the results:

- Patent Owners have sought seek clarification regarding any internal separations between the companies (TCH and Askeladden) that have been implemented to ensure autonomy.
- Petitioners have elected to not provide any such evidence, stating that this goes beyond their perceived scope of the question – and that in context the legal separation is sufficient for the PTAB purposes.

The following Facts are Assumed By The Patent Owner, and have not been disputed by counsel for Askeladden

- At the time the petitions were filed, Sean Reiley held a position as General counsel for Askeladden and was concurrently the Associate General counsel for The Clearing House (TCH).

- At the time the petitions were filed, the Board of directors for Askelladen and TCH included identical sets of people – or at least significant overlap (if not identical, please provide differences)
- Sean Reiley and the Board of directors were decision makers regarding the filing of the IPRs.
- Sean Reiley and the Board of TCH were decision makers regarding decisions about the PQI and establishment of Askkladden initiatives in their role of directors/employees of TCH.
- Sean Reiley and the Board of Askelladden were decision makers regarding decisions regarding the IPR filings, including the patents selected for the IPRs and the financing of the IPR filings on behalf of Askelladden.
- At the time the petitions were filed, Sean Oblack on behalf of the Clearing House issued a press release (October 27, 2014) asserting that the Clearing House (TCH) has asserted through the PQI that nine IPRs (including the one in question) was filed. The Clearing House (specifically through Sean Oblack) in their press release asserted that the PQI through Askeladden filed the IPRS.

The Patent Owners seek clarification/decision from the PTAB:

- The Petitioners, through their counsel, have elected not to provide additional information to the Patent Owners regarding the above assertions of fact – and have elected not to provide additional information regarding any internal safeguards enacted between AskeladdenIPR and The Clearing House (TCH), to ensure autonomy of decisions and to ensure that concurrent employment of key members. Patent owners assert that this provided an effective means to circumvent legal company barriers with regard to decisions.
- It is the position of Askeladden that no further information regarding Patent Owner’s questions and the assumptions (based on evidence) above is relevant – and have elected not to provide any such information voluntarily.
- Questions exist regarding the legal standards applicable to RPI in the IPRs for which the Patent Owners and Askelladen are in disagreement. Specifically, assuming the facts above, which have not been refuted by evidence through such evidence was properly requested by Patent Owners of Askelladden, Patent Owners seek clarification from the Board as to whether at least TCH (assuming the facts above to be True) is in fact a real party of interest – based on legal standards of the PTAB and IPR proceedings.
 - Patent Owners have provided Petitioner with an opportunity to refute the above facts, which was not done. Thus, for purposes of PTAB decision it is reasonable to assume the facts are true in absence of contravening evidence not known to exist.
- Counsel for AskeladdenIPR asserts that the standards from RPX were unique since past behavior was involved in an estoppel. Patent Owners assert that any estoppels resulting from IPR decisions also apply to future behavior so that the PTAB is asked to determine as a matter of law whether past behavior is dispositive to the determination of any RPI questions for IPRs, or whether the salient factor is the legal estoppel involved and its effect on IPR parties.
- Given the undisputed facts and undisputed assumptions above, Patent Owners seek a determination from the PTAB regarding the legal standard for asserting RPI, and seeks a determination given the facts and assumptions above that TCH is a real part of interest in the petitions that should be bound by any estoppels established by a resolution of the IPRs.
- Further, the Patent Owners lacks any information regarding involvement of member banks and TCH, and informal requests for information in this regard have been made but

denied as Askelladen's position is that this information is not relevant – largely due to Askelladen's belief that this determination is only relevant should TCH be a real party of interest – and that any involvement between Financial Institutions involved with the IRPS has only been through the Clearing House (and has not been directly between Financial Institutions and Askelladen).

- The Patent Owners seek clarification of law on this point, and seek the PTAB's discovery permission to receive relevant evidence regarding influences/financing of Financial Institutions and any of the following entities Askelladen, PQI Organization, and the TCH.
- Requested discovery is for a relatively narrow scope consistent with the determination of relevant law on the issue of RPI, to be determined by the PTAB, as this area of law is presently in need of clarification to properly scope discovery post the RPX decision (in patent owner's opinion). In absence of discovery, the Patent Owners request the PTAB assume (as facts of law) that the disputed facts and assumptions be considered to be legally true, as all evidence to contest these assumptions (reasonable in light of Actions taken by the Patent Owners and circumstantial evidence from the Patent Owner's perspective) is only possessed by Askelladen, the PQI Organization, TCH, and/or Financial Institutions cooperating with TCH or Askelladen. Counsel for Askelladen has refused to provide requested evidence in this regard that was requested by the Patent Owners – asserting it to be irrelevant for the PTAB's decision and part of an unjustified "fishing expedition."

Patent Owners would like to present the Petitioner with an opportunity to respond to the above. Any such responses and/or facts that refute the above will also be included as exhibits/evidence in the Patent Owners response – to ensure the PTAB decision makers have the best facts available to make decisions regarding the RPI dispute. Based on the below email – Patent Owners understand that no response from counsel for Askelladen may be forthcoming.

Very Truly Yours,
Brian K Buchheit for

Brian K Buchheit and Sean McGhie, Patent Owners
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