

Paper No. \_\_\_\_  
Filed: February 26, 2015

Filed on behalf of: Askeladden LLC

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

Askeladden LLC  
Petitioner

v.

Sean McGhie and Brian Buchheit  
Patent Owner

---

Case IPR2015-00122  
U.S. Patent No. 8,523,063

---

**PETITIONER'S MOTION TO SEAL  
PETITIONER'S LIMITED LIABILITY COMPANY AGREEMENT  
PURSUANT TO 37 C.F.R. § 42.54**

In an email dated February 24, 2015, the Board requested that Petitioner Askeladden LLC (“Askeladden”) submit Askeladden’s Operating Guidelines. That document is contained within Askeladden’s Limited Liability Company Agreement (“LLC Agreement”), attached hereto as Exhibit 1533. Further, at present, Patent Owners do not oppose Petitioner’s filing of confidential information under seal, but oppose certain terms in the Board’s Default Protective Order.

I. Good cause exists for sealing Petitioner’s confidential information.

The Office Patent Trial Practice Guide provides that “the rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Under the Board’s rules, “confidential information [is identified] in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54).

Askeladden is the sole real party-in-interest in this proceeding. In their Preliminary Response, Patent Owners allege that another entity, The Clearing House, is a real party-in-interest. *See* IPR2015-00122, Paper 15, at 52. On February 17, 2015, the Board authorized a reply to Patent Owner’s Preliminary

Response and directed Askeladden to “present evidence to support its apparent position that Askeladden is the sole real party-in-interest,” preferably in the form of a declaration (Paper No. 16). On February 23, 2015, Askeladden filed a Reply Brief (“Brief”) and a Declaration of Sean Reilly (“Declaration”), along with a Motion to Seal the Brief and Declaration and an executed copy of the Board’s default protective order. *See* Paper Nos. 17, 18, 19, 20; Exhibit 1531. On February 24, 2015, the Board contacted the parties via email, requesting that Askeladden provide a document referenced in Paragraph 11 of the Declaration as “Operating Guidelines”. The LLC Agreement attached hereto includes, as Exhibit A, the Operating Guidelines where the relevant portions referenced in the Declaration may be found.

The LLC Agreement establishes, as stated in the Declaration, that Askeladden maintains sole control over the handling of this IPR. *See, e.g., Unified Patents Inc. v. Dragon Intellectual Property, LLC*, IPR2014-01252, Paper 37 (B.P.A.I. 2015). In particular, the narrowly-tailored excerpts that Askeladden seeks to seal discuss details of Askeladden’s organizational structure, business processes, financing, and operational guidelines, which are confidential.

Askeladden has a strong interest in maintaining the confidentiality of its internal business structure and strategy. On the other hand, there is no countervailing interest that would counsel against grant of the present motion. The

Patent Owners do not oppose the filing of Askeladden's supporting information under seal. And, the sealed information has nothing to do with the ground of invalidity at issue in the IPR proceeding. Therefore, grant of the present motion will have no effect on the public's interest in "maintaining a complete and understandable file history."

#### Certification of Non-Publication

On behalf of Petitioner, undersigned counsel certifies that the information identified as confidential and sought to be sealed has not, to their knowledge, been published or otherwise made public.

#### II. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54 and Proposed Protective Order

Petitioner proposes using the Board's Default Protective Order, attached as Appendix A. Petitioner's executed copy of this proposed Protective Order was already previously filed (Paper No. 20).

Petitioner has conferred in good faith with Patent Owners regarding the use of the Board's Default Protective Order to file Askeladden's confidential information under seal. While Patent Owners are not opposed to such filings under seal, the Patent Owners currently disagree with certain terms in the Board's Default Protective Order. The parties have both discussed this matter over the phone and via email, but did not reach agreement in advance of the Board's imposed filing deadline.

III. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Board seal the LLC Agreement, which Petitioner files concurrently herewith.

Respectfully submitted,

/Stephen K Yam/  
Stephen K. Yam  
Attorney for Petitioner  
Registration No. 64,927

FITZPATRICK, CELLA, HARPER & SCINTO  
1290 Avenue of the Americas  
New York, New York 10104-3800  
Facsimile: (212) 218-2200

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.