

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 IPR2015-00123
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 1033. 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* IPR2015-00123, Paper 16, at 45. 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. 17). 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. 18, 19, 20, 21; Exhibit 1031. 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. 21).

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/
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