

From: Oliver, Justin [<mailto:JOliver@fchs.com>]
Sent: Tuesday, January 13, 2015 6:15 PM
To: Brian Buchheit; #AskeladdenIPR
Cc: Sean McGhie
Subject: RE: Petition Real Party of Interest Question [IWOV-FCHS_WS.FID7489794]

Brian,

Over the course of our email exchanges, the Petitioner has attempted to understand Patent Owners' positions and to respond in good faith to a lengthy series of questions and requests. Through these interactions, the Petitioner provided information far beyond what the rules require, so that the Patent Owners would have sufficient information.

The Patent Owners' strategy appears to have shifted in your most recent emails towards attempting to build an inaccurate record. The email "summary" provided below is inaccurate and is not a fair reflection of the information that you already have in your possession. We have provided extensive information regarding Askeladden's autonomy in these IPR proceedings, but that information is not reflected at all in the email below. Further, the "summary" ignores information that we have provided and asserts that Askeladden is taking positions that it has never taken.

For example, you state as a "fact" that "[t]he Petitioner asserts that [Askeladden and The Clearing House Payments Company] are legally separate entities and that from their perspective that is sufficient separation that results in . . . Payments Company (TCH) not being a real party in interest." That is not an accurate summary of the position that has been expressed to you. In response to your queries, we provided Patent Owners with substantial information regarding the separation between Askeladden LLC and The Clearing House Payments Company with respect to these IPRs. We have also informed Patent Owners that neither The Clearing House Payments Company nor any bank participated in the selection of patents, the decision to file these IPRs, or in determining the content of the petitions. As reflected below, our position that The Clearing House Payments Company is not a real party in interest is based on those facts, not simply corporate entity status. In case this was not clear from our prior correspondence, Askeladden expressly insists that no such input be provided from any other entity and would be barred from considering any such input were it offered.

Patent Owners cannot simply make a series of assumptions and treat them as facts. As you are likely aware, misrepresentation of facts is inappropriate. See 37 CFR § 42.12. We will not continue to waste resources responding to numerous sets of hypothetical facts and faulty assumptions.

Sincerely,
Justin

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