

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 IPR2015-00124
U.S. Patent No. 8,540,152

PETITIONER'S UNOPPOSED MOTION TO SEAL
PETITIONER'S AUTHORIZED REPLY BRIEF TO PATENT OWNER'S
PRELIMINARY RESPONSE AND DECLARATION OF SEAN REILLY
PURSUANT TO 37 C.F.R. § 42.54

Pursuant to 37 C.F.R. § 42.54, Petitioner Askeladden LLC (“Askeladden”) hereby moves to seal portions of Petitioner’s Authorized Reply Brief to Patent Owner’s Preliminary Response (“the Brief”) and the Declaration of Sean Reilly (“the Declaration”), both filed concurrently herewith. Petitioner has conferred with Patent Owners and the Patent Owners have advised they do not oppose this motion. The parties have agreed to entry of the Board’s Default Protective Order, and, pursuant to Section 4(A)(ii) of that Order, Petitioner is also filing partially redacted public versions of its Brief and Declaration.

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. Patent Owners allege that another entity, The Clearing House, is a real party-in-interest. *See* IPR2015-00124, Paper 15, at 55. On February 17, 2015, the Board directed

Askeladden to “present evidence to support its apparent position that Askeladden is the sole real party-in-interest” (Paper No. 16). Askeladden is submitting the Brief and Declaration attached hereto in response to the Board’s February 17, 2015 Order.

Askeladden’s responsive Brief and Declaration delineate and discuss in detail the evidence that shows Askeladden alone controls the prosecution, direction and funding 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 this motion. And, the sealed information has nothing to do with the underlying substantive matters and questions 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.”

Moreover, it is undisputed that neither Petitioner nor any alleged real party-in-interest has been sued on the patent at-issue. Thus, the Petition will not be time-

barred regardless of the Board's decision on the real party-in-interest.

Accordingly, the Brief and Declaration relate only to a non-dispositive, non-substantive issue such that sealing them will not inhibit public access to a complete and understandable file history.

II. 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.

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

Petitioner has conferred in good faith with Patent Owners regarding this Motion to Seal. Patent Owners do not oppose the motion, and the parties have agreed to entry of the Board's Default Protective Order, attached as Appendix A.

IV. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Board seal the Brief and Declaration regarding the real party-in-interest, which Petitioner files concurrently herewith.

Respectfully submitted,

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