

Filed on behalf of: Patent Owners

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Askeladden LLC (Petitioner) v. Sean McGhie and Brian K Buchheit (Patent
Owner)

Case IPR2015-00125

U.S. Patent No. 8,540,152

PATENT OWNERS MOTION FOR DISCOVERY AUTHORIZATION

Patent Owners submit this request for additional discovery in the referenced IPR (i.e., the Proceeding). The requested additional discovery is to receive additional evidence believed to show that the boundary lines are blurred sufficiency between owning banks of the Clearing House Payments Company, referred to hereafter as Member Banks, and the Clearing House Association, LLC (referred to collectively hereafter as Alleged RPI) with respect to the Proceedings and Askeladden LLC and the Clearing House Payments Company LLC (referred to collectively hereafter as Acknowledged RPI) such that the Alleged RPI (currently non-parties) is a real party-in-interest having privity with the Petitioner.

1. Patent Owners Request Additional Discovery Regarding Concurrent Employment between Acknowledged RPI and Alleged RPI

Patent Owners request additional discovery for names and roles of each individual employee/officer/director of the Acknowledged RPI who is an employee/officer/director of the Alleged RPI. This request is confined to time periods between September 2014 and May 2015.

The above additional discovery is in the interest of justice. Regarding the first *Garmin* factor, the requested additional discovery is more than a mere allegation and is useful. The Clearing House (TCH not PAYCO) formed the PQI (ex 2033) that is directed by General Counsel for Askeladden LLC (ex 2033). TCH

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explicitly includes the Clearing House Association LLC (Ex 2033), which provides thought leadership for the PQI. Leadership for the PQI (Ex 2029) overlaps with leadership of the TCH (ex 2031, 2032), which includes the Clearing House Association LLC (ex 2032 – specifically Jill Hershey, Rob Hunter) and the PAYCO (ex 2031– specifically Dave Fortney and Al Wood). TCH intermixes executives of the Clearing House Payments Company LLC and the Clearing House Association LLC on its website (ex 2033). TCH explicitly lists its owner banks on its Web site (ex 2051). The PQI lists amicus Briefs filed by both the Clearing House Association LLC and Askelladen LLC (ex 2052). Nearly identical amicus briefs on the PQI list have been filed by the Clearing House Association LLC and Askellanden LLC (ex 2053: showing a redline between two briefs filed 12 days apart – same firm; nearly identical; one by the Clearing House Association LLC and the other by Askelladden LLC).

Askeladden LLC, when submitting amicus briefs under the PQI emphasizes its affiliation with the Clearing House Association LLC and with Member Banks (ex 2050, pg 1) and emphasizes that the interests of its owner banks are being represented. Askeladden LLC when submitting Amicus briefs emphasizes the Member Banks employs over 1 million people in the United States and 2 million people worldwide (ex 2048, pg 1). The Clearing House Association LLC has standing to represent member banks before SCOTUS (ex 2049 at ii). Based on the

above, Patent Owners have evidence that their discovery request is more than a mere allegation, and the overlap between companies employees has already been determined to be useful (ex IPR2015-00122, Paper 16 at 3).

Regarding the second *Garmin* factor, RPI questions are threshold questions by statute that are to be handled as early in the proceedings as possible (IPR2015-00122, Paper 16, page 5).

Regarding the third *Garmin* factor, the Petitioner intentionally shields the corporate structure of Askeladden and details of the interconnections between the Alleged RPI and the Acknowledged RPI from the public, as noted by the Protection Order filed when submitting Askeladden's Operating Guidelines (IPR2015-00122, Papers 14 and 15). Patent Owners are unable to generate equivalent information by other means in absence of the additional discovery being granted.

Regarding the fourth *Garmin* factor, the Acknowledged RPI are able to clearly ascertain who are their executive officers/directors and members in their employ that are also employed by the Alleged RPI. The requested additional discovery is easily understandable. A number of these people are known to exist (IPR2015-00122, Papers 14 and 15; also ex 2029, 2032, 3033, 2051) but the extent of overlap is unknown and intentionally maintained as privileged information.

Regarding the fifth *Garmin* factor, the Acknowledged RPI maintain employee records, which contain the requested information with a trivial effort. Indeed, Askeladden LLC has asserted to the Board that it maintains separate financial information and company for Askeladden, which will clearly indicate when resources from other companies are utilized for Askeladden's purposes. Similarly, TCH indicates overlapping employees and projects on its own Web site as well as its owner banks, so PAYCO is in possession of the requested information by a relatively trivial search of its records. Further, Askeladden LLC leads the PQI, which by definition includes directors/officers of the Clearing House Association, LLC. Further, Askeladden (IPR2015-00122, paper 14 and 15) maintains records of Member Bank employees that have overlapping responsibilities significant to Askeladden and the Proceeding.

2. Patent Owners Request Additional Discovery Regarding Funding of the Proceedings

Patent Owners request additional discovery on funding of the Proceedings. Specifically, Patent Owners request disclosure on a relative percentage or level of funding of the Proceedings provided by Member Banks. This is to include initial funding for the PQI from the Member Banks for allocations directed to initial IPRs to be filed under the PQI. A break-down of funding used in the Proceedings acquired from Member Banks directly or indirectly is specifically requested.

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