

Paper No. ____
Filed: June 5, 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 IPR2015-00125
U.S. Patent No. 8,540,152

**PETITIONER'S MOTION TO SEAL
PETITIONER'S OPPOSITION TO
PATENT OWNERS' MOTION FOR DISCOVERY AUTHORIZATION
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 Opposition to Patent Owner’s Motion for Discovery Authorization (“the Opposition”), filed concurrently herewith. The Opposition discusses evidence that has already been sealed, as a result of Petitioner’s previous discussions with Patent Owners and Patent Owners’ acquiescence to sealing such evidence. *See* Paper 19 at 1; Paper 22 at 1. Consequently, the Board’s Default Protective Order (“Protective Order”) was entered in this case. Paper 20; Paper 24; Paper 25. Thus, Petitioner seeks to seal the Opposition inasmuch as it contains information already deemed confidential and related information. Pursuant to Section 4(A)(ii) of the Protective Order, Petitioner is also filing partially redacted public versions of its Opposition.

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).

Patent Owners seek discovery in connection with their speculation that “Alleged RPI,” *i.e.*, “owning banks” of The Clearing House Payments Company LLC (“PayCo”) and the Clearing House Association, are real parties-in-interest in this proceeding. *See* Paper 39. The Opposition discusses evidence showing that Askeladden alone controls the prosecution, direction, and funding of this IPR. The narrowly-tailored excerpts of the Opposition 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. Further, there is no countervailing interest that would counsel against grant of the present motion. The confidential information relates to evidence already sealed in this case, which Patent Owners did not oppose. And, the sealed information has nothing to do with the underlying substantive matters and questions at issue in this 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, the Opposition relates only to a non-dispositive request for discovery about third-parties such that sealing it will not inhibit public access to a complete and understandable file history.

Additionally, the Board previously accepted Askeladden's motions to seal papers and exhibits containing the same or substantively similar information. *See* Papers 17-19; Paper 22; Paper 36; Ex. 1031; Ex. 1033.

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 previously conferred with Patent Owners regarding sealing documents and portions thereof containing the same, or substantively similar, confidential information that Petitioner requests to seal in the Opposition. Patent Owners did not oppose. The Board's Default Protective Order has already been entered. Further, Petitioner notified Patent Owners of its intent to file the present motion, and Patent Owners did not object.

IV. Conclusion

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

Respectfully submitted,

/Frank A. DeLucia/

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