

Filed on behalf of: Patent Owners

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Askeladden LLC Petitioner v. Sean I. McGhie and Brian K. Buchheit, Patent  
Owners

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Case IPR2015-00137

U.S. Patent No. 8,297,502

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PATENT OWNERS' REPLY TO OPPOSITION FOR ADDITIONAL DISCOVERY

The Proceeding is part of an initiative of the PQI (Ex 2033, 2034; Ex 1533, pg 8, first para). The PQI is an initiative of The Clearing House (TCH)(Ex 2033, pg 1). TCH includes **PayCo** and **The Clearing House Association (the Association)** (Ex 2028, pg 2; Ex 2030). Questions regarding the **PQI initiative** are directed to the **Association** (Ex 2034, pg 1 – emailed PQI at *theclearinghouse.org* the questions). TCH is owned by **Member Banks** (Ex 2051). The PQI IPR initiative is funded [REDACTED] (Ex 1533, pg 10; 5<sup>th</sup> point) [REDACTED] [REDACTED] (Ex 1533, pg 12, 2<sup>nd</sup> point, first sentence; 4<sup>th</sup> point (2)). Selection of patents is constrained by [REDACTED] [REDACTED] Individuals hold Positions (referring herein to employee/committee member/officer/director) indicative of blurred lines between the Acknowledged RPI (Askeladden and PayCo) and the Alleged RPI (Association and Member Banks). Each [REDACTED] for the PQI IPR initiative (Ex 1533, 2<sup>nd</sup> point). Funding of the PQI initiative comes from [REDACTED] (Ex 1533, pg 10, 5<sup>th</sup> point and Ex 2034, pg 2). PQI funding is used by the **Association** and **Askeladden** (Ex 2052, 2049, 2050). Artifacts used in PQI IPR [REDACTED] [REDACTED] (Ex 1533, pg 8, first para, item (2)).

Petitioner alleges requests indicative of the overlap of Positions between the Acknowledged RPI and the Alleged RPI is prohibitively burdensome and relies on

information not in possession of the Acknowledged RPI. It is not credible that neither Askeladden nor PayCo maintains a personnel system or organization chart. PayCo must ensure selections of [REDACTED] comply with [REDACTED] [REDACTED] (Ex 1533, pg 10, 1<sup>st</sup> point). Regarding sufficiency of possessed information, known PQI executives and known Association positions overlap (Ex 2029, 2028, 2030). [REDACTED]

[REDACTED]).  
Askeladden and PayCo position holders [REDACTED] can concurrently hold positions in [REDACTED]. Member Banks position holders can hold [REDACTED]. Currently undisclosed [REDACTED] possess key Proceeding data, yet names (currently unknown) must be provided to even request depositions.

Funding used in the Proceeding was provided for the PQI initiative by [REDACTED] [REDACTED] (Ex 1533, page 10). This PQI initiative funding was consumed by Askeladden and the Association(Ex 2052). [REDACTED] [REDACTED]. Similarly, use of artifacts funded outside Askeladden (for amounts over \$1000) is a reasonable request to target specific information for the Proceeding for RPI purposes [REDACTED]. The burden of providing this information is minimal relative to its probative value.

Regarding requested dates, Petitioner relies on information that is inconsistent with norms of the industry, with regards to timelines required to produce Proceeding artifacts. Clarification of these inconsistencies goes towards Patent Owners burden of Persuasion, to rebut the Petitioner identified RPI as it reasonably calls into question facts upon which the indicated RPI was made. Heavy reliance on [REDACTED] to refute the rebutting of the presumption of RPI is problematic, [REDACTED]

[REDACTED]. No attorney client privilege exists between Askeladden and PayCo ([REDACTED]) and none applies between Askeladden and the Expert. Additionally, dates of deliverables are non-privileged information subject to public audits and financial disclosure (e.g., IRS audits, reporting of expenses/income).

Lines between Acknowledged and Alleged RPI are blurred. [REDACTED]

[REDACTED]. RPI determinations are fact intensive ones based on the totality of circumstances. The presumption of validity of the Asserted RPI is highly questionable given known facts. The requested additional discovery will reasonably yield significant facts to rebut the presumption (of validity of RPI) while imposing a minimal burden, and should therefore be granted.

## 42.6(e) CERTIFICATE OF SERVICE

I certify that this document was served or simultaneously is being served on each opposing party with the filing of this document. I certify that the following exhibits being filed along with this document, if any, have been or simultaneously are being served on each opposing party:

Exhibit Number	Description

42.6(e)(4) (iii)(A) The date and manner of service are (Electronic or Express Mail): June 9, 2015 (ELECTRONIC), via email to [askeladdenIPR@fchs.com](mailto:askeladdenIPR@fchs.com).

42.6(e)(4)(iii)(B) The name and address of every person served are:

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