

Askeladden Supports Electronic Frontier Foundation's Right to Participate in the Federal Circuit's Review of Successful Patent Challenge

Barring Participation by Parties Like EFF Could Undermine Inter-Partes Review Process Established Under the America Invents Act

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Askeladden LLC, as part of its Patent Quality Initiative, joined Unified Patents Inc. in submitting an amicus curiae brief this week in support of Electronic Frontier Foundation's (EFF's) right to participate in Personal Audio, LLC's appeal of the Patent Trial and Appeals Board's (PTAB's) decision to invalidate its patent that it has asserted against podcasting. In its brief, Askeladden and Unified Patents argue that the Federal Circuit's decision in *Consumer Watchdog v. Wisconsin Alumni Research Foundation* is not applicable in this case and EFF should be permitted to participate.

The brief explains that the situation in this case is the opposite of *Consumer Watchdog*. Here, it is not EFF seeking to invoke federal jurisdiction. Instead, it is Personal Audio that is seeking the review of the PTAB's decision and is the party required to satisfy Article III's "case or controversy" requirement. Askeladden and Unified Patents further explain that any prudential concerns regarding EFF's participation in the appeal are met by the *Inter Partes Review* (IPR) statute which states that any party to an IPR proceeding shall have the right to be a party to the appeal.

In the brief, Askeladden and Unified Patents argue, "Depriving EFF of the right to participate in the appeal would contradict Congress's express judgement, and it could undermine the [*Inter Partes Review*] process more generally. In adopting the IPR process as part of the America Invents Act, Congress wanted to encourage prompt administrative challenges to improvidently granted patents to ensure that weak patents are not used to stifle innovation and competition."

If the Court ultimately disagrees with Askeladden, Unified Patents and EFF, the amicus brief concludes by respectfully urging the Court to refrain from establishing any categorical rules that limit participation as a party to an appeal of an IPR decision. Askeladden and Unified Patents argue that many organizations and individuals choose to undertake the challenging and costly task of initiating IPRs. These include non-profits, educational foundations, professional societies, and trade associations, among others. By creating a "bright-line" rule, the Court's actions could have unforeseen consequences on the IPR process.

Askeladden and Unified Patents encourage the Court to instead proceed carefully, analyzing parties on a case-by-case basis.

Unified Patents Inc. is a for-profit, member-based organization whose goal is to reduce the number of non-practicing-entity assertions in specific technology areas.

About Patent Quality Initiative

Askeladden L.L.C. is a wholly-owned subsidiary of The Clearing House. Established in 1853, The Clearing House is the oldest banking association and payments company in the United States and is owned by the world's largest commercial banks, which hold half of all U.S. deposits. Askeladden is an education, information and advocacy organization with the goal of improving the understanding, use and reliability of patents in financial services and other industries. As part of its Patent Quality Initiative, Askeladden strives to promote better patents and patent holder behaviors by regularly filing amicus briefs, Inter Partes Reviews (IPRs) and engaging in educational activities.