

Askeladden Advocates against Tribal Sovereign Immunity in Patent Review Proceedings

Submitted an amicus brief in *inter partes* review challenges of former Allergan patents

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New York, NY — Askeladden filed an *amicus curiae* brief on Friday that presents arguments opposing the Saint Regis Mohawk Tribe’s motion to dismiss a series of *inter partes* reviews (IPRs) of Restasis® patents. The Tribe invoked Tribal Sovereign Immunity as a basis for its motion.

In its brief, Askeladden argues that the Tribe’s motion to dismiss should be denied because Tribal Sovereign Immunity does not apply to administrative proceedings like IPRs before the Patent Trial and Appeal Board (PTAB):

While the Supreme Court has repeatedly confirmed that, as a matter of judicial construct, Native American Tribes (like the Tribe) can be immune from “suits” in a court absent abrogation or waiver (*see* Paper 81, at 8), such immunity does not extend to all government action. *See, e.g., Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 755 (1998). In this regard, a PTAB proceeding is not a “suit” in court, but instead an administrative proceeding in which the Office (through the PTAB) takes “a second look at an earlier administrative grant of a patent.”

Askeladden filed its brief as part of its Patent Quality Initiative, which works to promote patent quality by—among other activities—challenging patents related to financial services that it believes are invalid and should not have been issued.

“By submitting this amicus brief, we hope to aid the PTAB in correctly determining whether Tribal Sovereign Immunity is applicable to IPR proceedings,” said Sean Reilly, General Counsel of Askeladden. “A finding that Tribal Sovereign Immunity applies would undermine the usefulness of PTAB proceedings for efficiently addressing low quality patents.”

In parallel litigation proceedings, the United States District Court for the Eastern District of Texas found asserted claims of the patents held by the Saint Regis Mohawk Tribe—which were originally owned by Allergan—to be invalid.

Askeladden is represented by Amster, Rothstein & Ebenstein LLP.

About the Patent Quality Initiative

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.