

PTAB Denies St. Regis Mohawk Tribe's Request for Sovereign Immunity in Challenges of Restasis Patents

Askeladden filed an amicus brief arguing against applicability of tribal sovereign immunity in IPR proceedings.

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New York, NY — On February 23, 2018, the Patent Trial and Appeal Board (PTAB) denied the St. Regis Mohawk Tribe's motion to terminate a series of *inter partes* review (IPR) proceedings involving six patents transferred to the Tribe by Allergan—a multinational pharmaceutical company. In an amicus brief submitted in December 2017, Askeladden argued that the Tribe's motion to dismiss should be denied because Tribal Sovereign Immunity does not apply to IPR proceedings before the PTAB.

In its decision in *Mylan Pharms. Inc., et al. v. Saint Regis Mohawk Tribe*, IPR2016-01127, Paper 130 (PTAB Feb. 23, 2018), the PTAB held that “the Tribe [did] not establish[] that it is entitled to assert its tribal immunity in [] *inter partes* review proceedings” and that IPRs are “not the type of ‘suit’ to which an Indian tribe would traditionally enjoy immunity under the common law.” Notably, the PTAB further held that “the Board does not exercise personal jurisdiction over the patent owner” but rather it “exercises jurisdiction over the challenged patent” in an IPR.

Askeladden filed its brief as part of its Patent Quality Initiative, which is an effort to improve the understanding, use, and reliability of patents in financial services and elsewhere.

“*Inter partes* review helps to improve and maintain overall patent quality,” said Sean Reilly, General Counsel of Askeladden. “We are pleased with this decision from the PTAB and will continue offer our perspective in important cases such as this.”

The Tribe is appealing the PTAB's decision denying its motion to dismiss the IPR proceedings.

Amster, Rothstein & Ebenstein LLP filed the amicus brief on behalf of Askeladden in this matter.

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.