

Askeladden Advocates against Tribal Sovereign Immunity for *Inter Partes* Review Proceedings

Submitted amicus brief in support of PTAB's decision finding tribal sovereign immunity inapplicable in six IPRs involving Restasis® patents

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New York, NY — Askeladden filed an amicus brief last week with the United States Court of Appeals for the Federal Circuit in *St. Regis Mohawk Tribe v. Mylan Pharmaceuticals Inc.* supporting the decision of the Patent Trial and Appeal Board (PTAB) finding tribal sovereign immunity inapplicable to *inter partes* review (IPR) proceedings and denying a tribe's motion to terminate a series of IPRs involving patents covering Restasis®. In December, Askeladden filed an amicus brief advocating against tribal sovereign immunity with the PTAB in these same IPR proceedings.

In its brief, Askeladden argues that, while tribes are immune from certain lawsuits in court, IPRs are administrative processes:

“As recognized in *Cuozzo*, an *inter partes* review is an administrative process held before the U.S. Patent and Trademark Office, an administrative agency, and not a law suit held in a Court (or a “judicial attack”). 136 S. Ct. at 2137–38. As such, traditional concerns regarding sovereign immunity, which focus on immunity from suit in a court, do not come into play.”

“The *inter partes* review process is an essential tool for challenging low quality patents and avoiding needless litigation,” said Sean Reilly, General Counsel of Askeladden. “Tribal sovereign immunity should not be available to shield suspect patents from review by the Patent Trial and Appeal Board.”

Askeladden filed the briefs as part of its Patent Quality Initiative, which seeks to improve patent quality and promote innovation by challenging poor quality patents, addressing questionable patent practices, and regularly filing amicus briefs in cases concerning important issues of patent law.

The Saint Regis Mohawk Tribe was assigned the Restasis® patents as part of a larger transaction that granted back to the prior patent owner, Allergan, virtually all of the significant commercial rights in the patents.

Askeladden is represented by Amster Rothstein and 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.