



## Amicus Brief Advocating Against Tribal Sovereign Immunity Filed in PTAB Proceedings

Author(s): Charles R. Macedo, Mark Berkowitz, Sandra A. Hudak, with [Jim Howard](#)

IPWatchdog

In response to a hotly contested series of patent litigations and PTAB proceedings involving Restatis<sup>®</sup>, the patent owner Allergan, Inc. (“Allergan”) made a eleventh hour assignment of its patents (with an accompanying license back) to the St. Regis Mohawk Tribe (“the Tribe”). As a result of this transaction, the Tribe asserted Tribal Sovereign Immunity before the PTAB and filed a motion to dismiss.

Thereafter, in the federal litigation in the Eastern District of Texas, Judge Bryson found the asserted claims of the patents to be invalid. Although the sovereign immunity issue was not at issue in that case, the court considered the validity of the transaction for purposes of joinder, and criticized the transaction as being like “sham transactions, such as abusive tax shelters.” Nonetheless, the PTAB proceedings continued.

On November 3, 2017, the PTAB invited Amicus Curiae to submit briefs to address the novel issue being raised by the Tribe’s Motion to Dismiss on the grounds of Tribal Sovereign Immunity. In response, [Askeladden LLC submitted an amicus brief](#).

<http://www.ipwatchdog.com/2017/12/08/amicus-brief-against-tribal-sovereign-immunity-ptab/id=90580/>