

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TRIANTAFYLLOS TAFAS)	
)	
Plaintiff,)	
)	
v.)	1:07cv846(JCC/TRJ)
)	
JON. W. DUDAS, et al.)	
)	
Defendants.)	

CONSOLIDATED WITH

SMITHKLINE BEECHAM CORPORATION, et al.))	
)	
Plaintiffs,)	
)	
v.)	1:07cv1008(JCC/TRJ)
)	
JON W. DUDAS, et al.)	
)	
Defendants.)	

MOTION OF *AMICUS CURIAE*
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION
FOR LEAVE TO FILE A BRIEF ON THE ISSUE OF RETROACTIVITY OF THE NEW
RULES

The American Intellectual Property Law Association (“AIPLA”) moves for leave to file its brief as *amicus curiae* explaining why the new Rules are impermissibly retroactive.

AIPLA is a national association founded more than 100 years ago and is now comprised of more than 17,000 members interested in all areas of intellectual property law. AIPLA members include attorneys employed in private practice and by corporations, universities and government. AIPLA members represent both owners and users of intellectual property across

the entire business spectrum, from very large corporations to individual inventors and in essentially all areas of technology. AIPLA has long been involved in advocacy of positions adopted by its Board of Directors as *amicus curiae* before the United States Court of Appeals for the Federal Circuit and the United States Supreme Court, as well as, on rare occasions, before state and federal district courts. AIPLA has also been a long-time leader in the area of professional development for members of the intellectual property community. The full scope and extent of the AIPLA's activities is contained in its website at www.aipla.org. AIPLA has no stake in any of the parties to this litigation or the results of this case, other than its interest in ensuring enacted regulations are consistent with applicable law.

AIPLA wishes to submit a brief addressing how the retroactive impact of the new Rules will adversely impact inventors and innovation and thus should be declared void, but expresses no opinion on the prospective impact of the new Rules.. AIPLA believes it possesses special information and a unique perspective on this issue not otherwise available to the Court, because of, among other things, its long involvement and focus on patents and patent law, inputs routinely provided from many of its 17,000 members (a significant percentage of whom are patent practitioners) during meetings and throughout the year and its many committees dealing with intellectual property law. AIPLA plans to file its brief by December 20, 2007 in accordance with the briefing schedule set by this Court.

AIPLA is authorized to state that counsel for the GSK Plaintiffs in C.A. No. 1:07cv 1008 and for Mr. Tafas in C.A. No. 1:07cv846 have consented to the filing of this brief. Counsel for Defendants advised the undersigned that Defendants express no position on the instant motion. In light of the parties' views on this motion for leave, as well as the previous approval in this

case of AIPLA's request to file an *amicus* brief in support of the GSK Plaintiffs' motion for preliminary injunctive relief, no hearing is requested on this motion for leave.

Accompanying this motion is AIPLA's supporting memorandum which sets forth more fully the grounds for its request for leave. A proposed Order also is submitted herewith.

WHEREFORE, for the reasons stated herein and for good cause shown, AIPLA requests that the Court grant its motion for leave to file its *amicus* brief in support of the Plaintiffs in these consolidated actions.

Respectfully submitted,

James Pooley, *President*
AMERICAN INTELLECTUAL
PROPERTY LAW ASSOCIATION
241 18th Street, South, Suite 700
Arlington, VA. 22202

/s/
Thomas J. O'Brien (VSB 23628)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202-739-3000
Fax: 202-739-3001
email:

Of Counsel
Jerry R. Selinger (*pro hac vice*)
MORGAN, LEWIS & BOCKIUS, LLP
1717 Main Street, Suite 3200
Dallas, TX. 75201

ATTORNEYS FOR AMERICAN
INTELLECTUAL PROPERTY LAW
ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December 2007, the foregoing pleading was filed electronically using the CM/ECF system, which will send notification by electronic means to the following counsel of record:

Joseph D. Wilson, Esq.
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007-5108
email: jwilson@kelleydrye.com

Attorney for Plaintiff in C.A. No. 1:07cv846

Elizabeth M. Locke, Esq.
Kirkland & Ellis LLP
655 15th Street, NW – Suite 1200
Washington, DC 20005
email: elocke@kirkland.com

and

Craig C. Reilly Esq.
Richard McGettigan Reilly & West PC
1725 Duke Street – Suite 600
Alexandria, VA 22314
email: craig.reilly@rmrwlaw.com

Attorneys for Plaintiffs in C.A. No. 1:07cv1008 (JCC/TRJ)

Chuck Rosenberg
United States Attorney
Lauren A. Wetzler, Esq.
R. Joseph Sher
Andrew Price
Assistant United States Attorneys
United States Attorney's Office
2100 Jamison Ave.
Alexandria, VA 22314
email: lauren.wetzler@usdoj.gov

Attorneys for Defendants in C.A. Nos. 1:07cv846 and 1:07cv1008

Rebecca Malkin Carr
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
email: rebecca.carr@pillsburylaw.com

and

Scott J. Pivnick
Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Boulevard
McLean, VA 22102-4856
email: Scott.pivnick@pillsburylaw.com

Attorneys for Amicus Elan Pharmaceuticals, Inc.

James Murphy Dowd
Wilmer Cutler Pickering Hale & Dorr, LLP
1455 Pennsylvania Avenue, NW
Washington, DC 20004
email: james.dowd@wilmerhale.com

Attorney for Amicus Pharmaceutical Research and Manufacturers of America

Dawn-Marie Bey
Kirkpatrick Stockton LLP
700 13th Street, NW
Suite 800
Washington, DC 20005
email: dbey@kslaw.com

Attorney for Amici Hexas, LLC, The Roskamp Institute and Tikvah Therapeutics, Inc.

Randall Karl Miller
Arnold & Porter, LLP
1600 Tysons Boulevard
Suite 900
McLean, VA 22102
email: randall_miller@aporter.com

*Attorney for Amicus Biotechnology Industry Organization **and** Amicus Monsanto Company*

Charles Gorenstin
Birch, Stewart, Kolasch and Birch, LLP
8110 Gatehouse Road
Suite 100 East
Falls Church, VA 22042
email: cg@bskb.com

*Attorney for Amicus Intellectual Property Institute
Williams Mitchell College of Law*

/s/

Thomas J. O'Brien (VA Bar 23628)
Morgan Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington D.C. 20004
(202) 739-5186 (phone)
(202) 739-3001 (fax)
to'brien@morganlewis.com

Attorneys for Amicus Curiae
American Intellectual Property Law Association