

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SMITHKLINE BEECHAM	.	Case 1:07-cv-01008
CORPORATION, d/b/a	.	
GLAXOSMITHKLINE, et al.	.	
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	October 31, 2007
JON W. DUDAS, et al.	.	10:01 a.m.
	.	
Defendants.	.	
.....	.	Pages 1 - 78

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JAMES C. CACHERIS
UNITED STATES DISTRICT COURT JUDGE

COPY

1 it's not appropriate to file unduly successive or
2 repetitive applications. Again, here is the Federal
3 Circuit imposing -- saying that it doesn't impose a
4 limit. There is -- there are situations where
5 applicants have gone too far. That's what this PTO is
6 seeking to address.

7 Furthermore, since there hasn't been much focus on
8 it here, I'll just briefly address. Final Rule 114 is
9 in keeping with Section 132, which, again, because
10 there's no absolute limit. In addition, Final Rule 75
11 is in keeping with Sections 111 and 112, which are
12 simply silent as to whether one can require something
13 like an examination support document.

14 Plaintiffs misconstrue the ESD requirement to
15 suggest that there's a limit, that it's only 525.
16 That's not what the ESD requirement says. It simply
17 says if you want to go above that, the applicant needs
18 to help the agency. It needs to submit an examination
19 support document so that the agency isn't hampered in
20 its ability to examine the applications.

21 Turning then beyond the question of statutory
22 authority to whether these rules are arbitrary and
23 capricious --

24 THE COURT: Counsel doesn't think the Court has to
25 reach that at this stage. Do you agree or disagree?

1 the PTO would like these rules to go into effect as
2 quickly as possible. However, we do recognize that
3 given the array of folks lined up against us, we do
4 want adequate time to brief the issue.

5 THE COURT: Very well. I'll let you all try to
6 work that out. If you can't, then come see myself or a
7 magistrate judge. Anyhow, thank you. I'll recess then
8 until tomorrow morning.

9 -----
Time: 11:51 a.m.

10
11
12
13
14
15
16
17
18
19
20
21 I certify that the foregoing is a true and
22 accurate transcription of my stenographic notes.
23

24 
25 Rhonda F. Montgomery, RPR, CCR