

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

TRIANTAFYLLOS TAFAS,  <div style="text-align: right;">Plaintiffs,</div>	)	
	)	
v.	)	1:07cv846 (JCC/TRJ)
	)	
JON W. DUDAS, et al.  <div style="text-align: right;">Defendants.</div>	)	
	)	

CONSOLIDATED WITH

SMITHKLINE BEECHAM CORPORATION, et al.)  <div style="text-align: right;">Plaintiffs,</div>	)	
	)	
v.	)	1:07cv1008 (JCC/TRJ)
	)	
JON W. DUDAS, et al.  <div style="text-align: right;">Defendants.</div>	)	
	)	

**MINNESOTA AMICI MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A BRIEF IN SUPPORT OF PLAINTIFFS' SUMMARY JUDGMENT MOTIONS**

The Valspar Corporation, General Mills, Inc., Donaldson Company, Inc., Ecolab Inc., and Anchor Wall Systems, Inc. (“Minnesota *Amici*”) submit this memorandum, pursuant to Local Civil Rule 7(F)(1), in support of their motion for leave to file a brief as *amici curiae* in support of Plaintiffs in the above-captioned litigation. The Court previously ordered that “Any and all *amici curiae* who wish to file briefs in support of the parties’ cross-motions for summary judgment shall file their briefs no later than Thursday, December 20, 2007”; the Court more recently moved the deadline for any brief of *amicus curiae* to December 27, 2007. The

Minnesota *Amici* request that they be allowed to file a brief by or on December 27, as well. The five companies working together on this brief also notified the Clerk of Court by letter dated October 31, 2007, of their intention to seek leave to file an *amicus* brief.

### **ARGUMENT**

The Court has discretion to allow non-parties such as the Minnesota *Amici* to participate as *amici curiae*, and to determine the extent and manner of participation. *See Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003). Such participation is appropriate when the putative *amicus* holds “an important interest” in the matter, and can offer “a valuable perspective that is helpful to the Court.” *United States v. Boeing Co.*, 73 F. Supp. 2d 897, 900 (S.D. Ohio 1999). The Minnesota *Amici* indeed would suffer a significant impact were the proposed new PTO rules enforced, and are especially qualified to illuminate the impact of the new rules for the Court.

The five companies collectively submitting the proposed brief represent a cross-section of prominent innovative American companies that all rely heavily on the United States patent system to protect their investments in new technology and develop their businesses. General Mills, for example, currently has approximately 250 patent applications pending in the United States, while Donaldson Company has 200. Each of the Minnesota *Amici* employs in-house intellectual property counsel, and use as many as nine, in the case of General Mills for instance, outside law firms to handle their patent prosecution docket. As such, the Minnesota *Amici* possess a strong interest in the significant changes proposed by the PTO to the rules governing the number of patent claims and continuations allowed, and the new procedures that will be put in place, if the PTO’s proposed new rules are enforced. All five companies believe that the new rules will cause substantial harm to them both in terms of several forms of new costs of doing business, and ultimately in restricting their access to the patent system.

The Minnesota *Amici* would contribute to the discussion before the Court an additional perspective on the practical impact of the PTO's proposed new rules on them and presumably hundreds of other leading companies in myriad fields that rely on patent protection as part of their business plans. Current practices and software systems utilized by the Minnesota *Amici* and similarly-situated entities, do not allow for the owner of multiple pending patent applications to track to sorts of information necessary to alert them to when, among other things, continuation applications filed by different law firms on their behalf, may trigger the presumptions under section 1.78(f)(1) or (2), and require disclosure of the purportedly "conflicting" applications to the PTO, along with proof they do not contain "patentably indistinct" claims. Failure to do would lead to a new requirement that the patent-owner submit an elaborate an expensive examination support document, or else face the cancellation of many of its pending claims.

By exceeding its authority and adding substantive restrictions to the existing legislative scheme for obtaining patents, if the proposed new rules are not enjoined, the PTO would force each company to develop new docketing systems, hire additional in-house counsel, pay for additional time from outside counsel, and ultimately could require them to consolidate prosecution in a single law firm, to avoid the consequences of the new presumptions put in place by new 37 C.F.R. §§ 1.75 & 1.78. The Minnesota *Amici* believe that the fuller discussion of this facet of the impact of the new rules they propose to provide with their *amicus* brief will help the Court more completely understand how the new rules will impermissibly constrain their entitlement under the Constitution and patent code to seek exclusive rights in their inventions.

### **CONCLUSION**

For the reasons set forth above, the Minnesota *Amici* ask that the Court grant leave to file an *amicus* brief due December 27, 2007 in support of Plaintiffs' summary judgment motions.

Date: December 21, 2007

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of December 2007, I caused a copy of the foregoing Minnesota *Amici* Memorandum in Support of Motion for Leave To File A Brief In Support of Plaintiffs' Summary Judgment Motions to be filed electronically with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to the following:

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By: \_\_\_\_\_ /s/

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