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

TRIANTAFYLLOS TAFAS, Plaintiff, v. JON W. DUDAS, et al., Defendants.	)	Case No. 1:07cv846 (JCC/TRJ)

CONSOLIDATED WITH

SMITHKLINE BEECHAM CORPORATION, et al., Plaintiff, v. JON W. DUDAS, et al., Defendants.	)	Case No. 1:07cv1008 (JCC/TRJ)

MOTION OF *AMICUS CURIAE* THE PENNSYLVANIA GREENHOUSES FOR LEAVE TO FILE A BRIEF IN SUPPORT OF PLAINTIFFS' ANTICIPATED MOTIONS FOR SUMMARY JUDGMENT

BioAdvance, The Life Sciences Greenhouse of Central Pennsylvania, and the Pittsburgh Life Sciences Greenhouse (collectively, the "Pennsylvania Greenhouses"), by undersigned counsel, move for leave to file a brief collectively as *Amicus Curiae* in support of plaintiffs SmithKline Beecham Corporation, SmithKline Beecham PLC, and Glaxo Group

Limited's (collectively referred to as "GSK Plaintiffs") and plaintiff Triantafyllos Tafas's (collectively the "Plaintiffs") anticipated motions for summary judgment.

The mission of the Pennsylvania Greenhouses is to advance the life sciences and to improve the lives of Pennsylvanians through improved healthcare and enhanced economic opportunity. The Pennsylvania Greenhouses, which are funded by the Commonwealth of Pennsylvania using monies received in The Tobacco Settlement Act of 2001, represent dozens of life sciences companies and organizations, including small research and development startups having a presence in Pennsylvania. They partner with a range of institutions, including local research universities, colleges, medical centers, economic development agencies, and life science companies. The Pennsylvania Greenhouses are involved in funding, mentoring, and promoting early stage companies involved in researching and developing products for use in the life sciences, including pharmaceuticals, diagnostics, and medical devices, for example.

As part of its activities, the Pennsylvania Greenhouses advocate on behalf of their members to maintain a policy environment, including the patent laws and rules, that support technological innovation and to assist their funded companies in their efforts to advance the life sciences, grow their businesses, and create jobs in Pennsylvania. The Pennsylvania Greenhouses have no stake in the GSK Plaintiffs or any of the other parties to this litigation. The Pennsylvania Greenhouses seek leave to participate as an *amicus* based upon their interest in avoiding changes to the patent rules that will irreparably damage the life sciences industry, Pennsylvania Greenhouse-funded companies, and the public.

The Pennsylvania Greenhouses' *amicus* brief would address the public interest prong of the plaintiffs' requests for injunctions permanently enjoining the implementation of the

Patent and Trademark Office's final rules published on August 21, 2007, Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications, 72 Fed. Reg. 46,716 (Aug. 21, 2007) (hereinafter "Final Rules") (to be codified at 37 C.F.R. pt. 1), and other issues raised by the parties during summary judgment about which the Pennsylvania Greenhouses could provide useful information. The life sciences industry, and in particular Pennsylvania's emerging life sciences companies, rely heavily on the current, established Patent and Trademark Office ("PTO") rules of practice to obtain adequate patent protection for their innovations and to attract financing for products and services that often take more than a decade to reach the market.

The Pennsylvania Greenhouses are deeply concerned about the irreversible loss of patent rights and the disincentives to innovation that the Final Rules will cause. The Pennsylvania Greenhouses are uniquely positioned to provide the Court with information and perspective on the Final Rules' substantial and disproportionate affect on small and early stage life sciences companies and organizations, as well as their inventions and products, that the parties cannot, or may not have the incentive to, provide. Additionally, the Pennsylvania Greenhouses are uniquely situated as recipients of state funds and economic development incentives, which funds are invested in emerging companies to assist in obtaining patent protection for the inventions central to their businesses.

Counsel for all Plaintiffs have consented to the filing of this motion. The defendants take no position on this motion. However, all parties agree that the motion should be decided without oral argument. To adhere to the current schedule in the Tafas case and in the GSK case, the Pennsylvania Greenhouses request that their *amicus* brief be due on December 27,

2007, the current due date for all such *amicus* briefs. If that schedule is modified or a different schedule is adopted in the GSK case, the Pennsylvania Greenhouses request that their brief be due on the same date as all other *amicus* briefs.

WHEREFORE, for the reasons stated herein and in its accompanying memorandum in support, the Pennsylvania Greenhouses respectfully request the Court to grant leave to file a collective *amicus* brief in support of the Plaintiffs' anticipated summary judgment motions.

Respectfully submitted,

/s/
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December 21, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December 2007, I caused a copy of the foregoing Motion of *Amicus Curiae* The Pennsylvania Greenhouses for Leave to File A Brief in Support of Plaintiffs' Anticipated Motions for Summary Judgment and accompanying proposed order to be electronically filed 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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