

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

_____)	
TRIANTAFYLLOS TAFAS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:07cv846(JCC/TRJ)
)	
JON W. DUDAS,)	
)	
Defendant)	
_____)	

CONSOLIDATED WITH

_____)	
SMITHKLINE BEECHUM)	
CORPORATION,)	
d/b/a GLAXOSMITHKLINE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:07cv1008(JCC/TRJ)
)	
JON W. DUDAS,)	
)	
Defendant)	
_____)	

**MEMORANDUM IN SUPPORT OF MOTION OF *AMICUS CURIAE*
BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA
FOR LEAVE TO FILE A BRIEF REGARDING THE EFFECTS OF THE
FINAL RULES ON ESTABLISHED PATENT LAW AND PROSECUTION**

The Patent, Trademark, and Copyright Section (PTC Section) of the Bar Association of the District of Columbia (“BADC”), moves for leave to file a brief as *amicus curie* in this action to detail ways in which the Final Rules conflict with the Patent Act, 35 U.S.C. § 1 et seq., and established patent prosecution practices, and the loss of patent rights that will result.

The PTC section of the BADC is one of the senior-most intellectual property bar associations in the United States, drawing its membership from government, industry and private practice. The BADC and its members have a substantial interest in the adjudication of significant issues that define our patent laws and practice, and submit *amicus curiae* briefs when issues of importance arise. The interest of the BADC here is entirely *pro bono*, to advance the development of laws and regulations that promote the progress of science and useful arts through the patent process.

The decision to allow a non-party to participate as *amicus curiae* comes within the broad discretion of the court. *DeJulio v. Georgia*, 127 F. Supp. 2d 1274, 1284 (N.D. Ga. 2001). *Accord Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007). “A court may grant leave to appear as an *amicus* if the information offered is timely and useful.” *Waste Mgmt. of Pennsylvania v. City of York*, 162 F.R.D. 34 (M.D. Pa. 1995); *Fluor Corp. & Affiliates v. United States*, 35 Fed. Cl. 284, 285 (1996) (finding that filing of *amicus* brief in midst of parties’ briefing of cross-motions for summary judgment was timely). *Amicus curiae* briefing should be allowed where, as here, the *amicus curiae* can “offer insights not available from the parties” or can provide “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Citizens Against Gambling*, 471 F. Supp. 2d. at 311 (internal quotation marks and citations omitted). In addition, non-party participants have “been allowed at the trial level where they provide helpful analysis of the law [or] they have a special interest in the subject matter of the suit,” among other reasons. *Bryant v. Better Business Bureau*, 923 F. Supp. 720, 727 (D. Md. 1996) (internal citations omitted).

The BADC wishes to submit a brief addressing the ways in which the Final Rules contravene the existing framework of the Patent Act with adverse consequences for the use of the

patent system to both protect invention and encourage the disclosure to the public of significant innovations. The BADC believe that it possesses a unique perspective on this issue not otherwise available to the Court because of, among other things, its submission of comments to the PTO on the rules initially proposed by the PTO, its long involvement and focus on patent and patent law and input from its members, who include many practitioners who have actively prepared and prosecuted patent applications before the PTO for many years, and many of whom have worked at the PTO. The BADC's proposed *amicus curie* brief is attached as Exhibit A to the BADC's Motion, and the BADC respectfully requests that the Court accept the brief for filing without requiring that it be filed separately.

Counsel for the GSK Plaintiffs in C.A. No. 1:07cv 1008 and for Mr. Tafas in C.A. No. 1:07cv846 have been contacted and have consented to the filing of this brief. Counsel for Defendants have advised that Defendants express no position on this motion but will not require oral argument on the BADC's motion for leave.

In light of the parties' views on this motion for leave, no hearing is requested.

CONCLUSION

For all of the foregoing reasons, the Bar Association of the District of Columbia requests that the Court grant its motion for leave and permit the filing of the amicus brief by the time set by the Court for the filing of such briefs, as provided by the proposed Order submitted with the motion.

Respectfully submitted,

/s/

Robert C. Bertin
Virginia Bar No. 41,278
Attorney for *amicus curiae*
Bar Assn. of the District of Columbia
BINGHAM MCCUTCHEN LLP
2020 K Street NW
Washington, DC 20006-1806
Telephone: 202-373-6672
Fax: 202-318-0534
email: r.bertin@bingham.com

President, BADC PTC Section

Of Counsel
Joslyn Barritt
POWELL GOLDSTEIN LLP
901 New York Avenue NW
Washington DC 20001

Co-Chair Patent Committee,
BADC PTC Section

Vandana Koelsch
HOWREY LLP
1299 Pennsylvania Ave., N.W.
Washington, DC 20004

Chair *Amicus Curiae* Committee,
BADC PTC Section

Dan Salehi, Esq.
SNELL & WILMER LLP
600 Anton Blvd., Suite 1400
Costa Mesa, CA 92626

Co-Chair Patent Committee,
BADC PTC Section

Attorneys for *Amicus Curie*
Bar Association of the District of Columbia
Patent, Trademark, & Copyright Section

CERTIFICATE OF SERVICE

I hereby certify that on this 27th 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
Kelley Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007-5108
email: jwilson@kelleydrye.com

Attorney for Plaintiff in CA. No. 1: 07cv846

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

and

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

Attorneys for Plaintiffs in CA. No. 1: 07ev1008 (JCC/TRI)

Chuck Rosenberg
United States Attorney
Lauren A. Wetzler
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 CA. 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*

Thomas J. O'Brien
Morgan Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington D.C. 20004
email: to'brien@morganlewis.com

*Attorneys for Amicus Curiae American Intellectual
Property Law Association*

R. Danny Huntington
Bingham & McCutchen LLP
2020 K Street NW
Washington, DC 20006
email: danny.huntington@bingham.com

*Attorneys for Amicus Curie Fédération Internationale
Des Conseils En Propriété Industrielle*

Matthew Schruers
Computer & Communications Industry Association
900 17th Street NW, Suite 1100
Washington, DC 20006
email: mschruers@ccianet.org

*Attorneys for Amici Curie Public Patent Foundation,
Computer & Communications Industry Association,
AARP, Consumer Federation of America, Essential
Action, Foundation for Taxpayer and Consumer
Rights, Initiative for Medicines, Access & Knowledge,
Knowledge Ecology International Prescription Access
Litigation, Public Knowledge, Research on
Innovation, and Software Freedom Law Center*

/s/

Robert C. Bertin
Virginia Bar No. 41,278
Attorney for *amicus curiae*
Bar Assn. of the District of Columbia
BINGHAM MCCUTCHEN LLP
2020 K Street NW
Washington, DC 20006-1806
Telephone: 202-373-6672
Fax: 202-318-0534
email: r.bertin@bingham.com