

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

TRANTAFYLLOS TAFAS,

Plaintiff,

v.

JON W. DUDAS, et al.,

Defendants.

Civil Action No. 1:07cv846 (JCC)

CONSOLIDATED WITH

SMITHKLINE BEECHAM CORPORATION,  
et al.,

Plaintiffs,

v.

JON W. DUDAS, et al.,

Defendants.

Civil Action No. 1:07cv1008 (JCC)

**INTEL CORPORATION'S MEMORANDUM IN SUPPORT OF  
MOTION FOR LEAVE TO FILE  
A BRIEF AS *AMICUS CURIAE* IN CONNECTION WITH  
THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT**

Intel Corporation ("Intel"), by counsel, pursuant to Local Rule 7(F) states as follows as its Memorandum in Support of its Motion for Leave to File a Brief as Amicus Curiae in Connection with the Parties' Cross-Motions for Summary Judgment:

Intel has reviewed the summary judgment briefs filed by the parties on December 20, 2007, and found that they adequately address most of the pertinent issues. As to one issue, however, Intel believes that an additional *amicus* brief would assist the Court.

In particular, Intel submits that the plaintiffs' challenge to the PTO's "2+1 Rules" regarding continued examination filings is premature. As explained in the accompanying brief, the 2+1 Rules are plainly valid on their face because they merely require applicants to provide information confirming that they have not unduly delayed in prosecuting their claims. Plaintiffs fear that the regulations will be applied unduly harshly and in practice will be tantamount to strict limits on the number of continuing applications. That is conjecture, however. Rather than speculate, Intel urges the Court to exercise restraint: to wait to see how the rules are actually applied before determining whether to strike them down or order the PTO to make an exception in a particular case. Because this point has been lost in the parties' briefing, Intel urges the Court to grant this motion and accept Intel's short (under 10-page) *amicus* brief.

WHEREFORE, Intel respectfully requests that the Court grant its Motion and allow the filing of its *Amicus Curiae* Brief and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

INTEL CORPORATION

Dated: December 28, 2007

/s/

M. F. Connell Mullins, Jr. (VSB #47213)  
Email: cmullins@spottsfain.com  
Hugh M. Fain, III (VSB No. 26494)  
Email: hfain@spottsfain.com  
Attorneys for Intel Corporation  
SPOTTS FAIN PC  
411 East Franklin Street, Suite 600  
P.O. Box 1555  
Richmond, Virginia 23218-1555  
Telephone: (804) 697-2000  
Facsimile: (804) 697-2100

**CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2007, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send a notification of such filing (NEF) to the following:

Joseph D. Wilson, III  
Joanna Baden-Mayer  
Kelley Drye & Warren LLP  
Washington Harbour  
3050 K Street NW, Suite 400  
Washington, DC 20007  
jwilson@kellydrye.com  
jbaden-mayer@kellydrye.com

Counsel for Plaintiff Triantafyllos Tafas

Craig C. Reilly  
Richards McGettigan Reilly & West, P.C.  
1725 Duke Street, Suite 600  
Alexandria, Virginia 22314  
craig.reilly@rmrwlaw.com

D. Sean Trainor  
Kirkland & Ellis LLP  
655 15th Street, N.W., Suite 1200  
Washington, D.C. 20005  
dtrainor@kirkland.com

Elizabeth M. Locke  
Kirkland & Ellis LLP  
655 15th Street, N.W., Suite 1200  
elocke@kirkland.com

Counsel for Consolidated Plaintiffs GlaxoSmithKline et al.

Lauren A. Wetzler  
United States Attorney's Office  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
lauren.wetzler@usdoj.gov

Counsel for Defendants Jon W. Dudas et al.

Randall K. Miller  
Arnold & Porter LLP  
1600 Tysons Boulevard, Suite 900  
McLean, Virginia 22102  
randall\_miller@aporter.com

Counsel for *Amici* Biotechnology Industry Organization and Monsanto Company

Scott J. Pivnick  
Pillsbury Winthrop Shaw Pittman LLP  
1650 Tysons Boulevard, Suite 1400  
McLean, Virginia 22102  
scott.pivnick@pillsburylaw.com

Rebecca M. Carr  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
rebecca.carr@pillsburylaw.com

Counsel for *Amicus* Elan Pharmaceuticals, Inc.

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

Counsel for *Amicus* American Intellectual Property Law Association

Dawn-Marie Bey  
King & Spalding LLP  
1700 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006  
dbey@kslaw.com

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

Robert E. Scully, Jr.  
Stites & Harbison, PLLC  
1199 N. Fairfax Street, Suite 900  
Alexandria, Virginia 22314  
rscully@stites.com

Counsel for *Amicus* Human Genome Sciences, Inc.

Craig J. Franco  
Odin Feldman & Pittleman P.C.  
9302 Lee Highway, Suite 1100  
Fairfax, Virginia 22031  
craig.franco@ofplaw.com

Counsel for *Amici* Polestar Capital Associates, LLC and Norseman Group, LLC

Jonathan D. Link  
McGuireWoods LLP  
1750 Tysons Boulevard, Suite 1800  
McLean, Virginia 22102  
jlink@townsend.com

Counsel for *Amicus* CFPH, LLC

Robert C. Gill  
Saul Ewing LLP  
2600 Virginia Avenue, N.W., Suite 1000  
Washington, D.C. 20037

Counsel for *Amici* PA Bioadvance, Life Sciences Greenhouse of Central Pennsylvania,  
and Pittsburgh Life Sciences Greenhouse

Charles Gorenstein  
Birch Stewart Kolasch & Birch LLP  
8110 Gatehouse Road  
Falls Church, Virginia 22040  
cg@bskb.com

Counsel for *Amicus* Intellectual Property Institute of William Mitchell College of Law

Mathew Christian Schruers  
Computer & Communications Industry Association  
900 17th Street, N.W., Suite 1100  
Washington, D.C. 20006  
mschruers@ccianet.org

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

John C. Maginnis, III  
1350 Connecticut Avenue, N.W., Suite 301  
Washington, D.C. 20036  
maginnislaw2@verizon.net

Counsel for *Amicus* CropLife America

M. F. Connell Mullins, Jr.  
Spotts Fain P.C.  
411 East Franklin Street, Suite 600  
Richmond, Virginia 23218  
cmullins@spottsfain.com

Counsel for *Amicus* Micron Technology, Inc.

Jackson D. Toof  
Robins Kaplan Miller & Ciresi LLP  
1875 Eye Street, N.W., Suite 300  
Washington, D.C. 20006  
toof.jackson@arentfox.com

Counsel for *Amicus* Valspar Corporation

Kenneth C. Bass, III  
Sterne Kessler, Goldstein & Fox  
1100 New York Avenue, N.W., Suite 600  
Washington, D.C. 20005  
kbass@skgf.com

Counsel for *Amici* AmberWave Systems Corporation, Fallbrook Technologies Inc.,  
Interdigital Communications LLC, Nano-Terra Inc., and Tessera, Inc.

Kevin Michael Henry  
Sidley Austin Brown & Wood, LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
khenry@sidley.com

Counsel for *Amicus* Washington Legal Foundation

\_\_\_\_\_  
/s/  
M. F. Connell Mullins, Jr. (VSB #47213)  
Attorney for Intel Corporation  
Spotts Fain PC  
411 East Franklin Street, Suite 600

P.O. Box 1555  
Richmond, Virginia 23218-1555  
Telephone: (804) 697-2000  
Facsimile: (804) 697-2100  
Email: [cmullins@spottsfain.com](mailto:cmullins@spottsfain.com)