

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

TRIANTAFYLLOS TAFAS,	)	
	)	
Plaintiff.	)	
	)	
- against -	)	1:07cv846 JCC/TRJ
	)	
JON. W. DUDAS. et al.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

CONSOLIDATED WITH

SMITHKLINE BEECHAM CORPORATION.	)	
	)	
Plaintiff.	)	
	)	
- against -	)	1:07cv1008 JCC/TRJ
	)	
JON W. DUDAS, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

**MEMORANDUM IN SUPPORT OF MOTION OF AMICUS CURIAE  
ROBERT LELKES FOR LEAVE TO FILE BRIEF IN  
SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Robert Lelkes, *pro se*, files this memorandum in support of his motion for leave to file his brief as *amicus curiae* in support of the Tafas and GSK plaintiffs' respective motions for summary judgment. I am a U.S. patent attorney (U.S. PTO Reg. No. 33,730), a member of the District of Columbia bar, a European patent attorney with more than 20 years of experience

in international private and corporate patent practice and, a former U.S. Patent and Trademark Office ("USPTO") patent examiner. I have no vested interest in the outcome of the above-captioned lawsuit other than as a patent practitioner and U.S. citizen concerned about U.S. compliance with international law.

Amicus curiae briefing may be allowed, *inter alia*, if the *amici* are able to offer insights that are not necessarily available from the parties or otherwise provide unique information or perspective that might be able to help the court in deciding a complex issue. *Citizens against Gambling in Erie County v. Kempthorne*, 471 F.Supp.2d 295, 311 (W.D.N.Y. 2007).

It is well established in a long line of U.S. Supreme Court cases that the judicial branch is responsible for ensuring that the administrative branch of government does not exceed the powers granted to it under the U.S. Constitution. The judicial branch has the power, and the responsibility, to ensure that administrative agencies such as the U.S. Patent and Trademark Office implement regulations consistent with U.S. law, including international laws ratified by the U.S., such as Art. 27 of the Patent Cooperation Treaty ("PCT").

At least 50,000 U.S.-originated international patent applications were filed at the U.S. PTO under the PCT last year. This represents more than half of all U.S.-originated patent


applications filed at the U.S. Patent and Trademark Office that year.

My proposed *amicus curiae* brief (attached to my motion as Exhibit 1) will discuss how implementation of the USPTO's new rules 1.75(b) and 1.265a violate the Patent Cooperation Treaty and are, therefore, *ultra vires*.

WHEREFORE, for all the foregoing reasons, the undersigned *amicus curiae*, Robert Lelkes, respectfully requests that the Court grant his motion, and enter an Order granting the undersigned leave to file an *amicus* brief in support of Plaintiffs' motions for summary judgment in the form attached to the undersigned's motion, and that said *amicus* brief be deemed filed upon the granting of this motion.

Dated: December 26, 2007

Respectfully submitted,

  
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