

FILED

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

2008 JUL -2 P 2:33

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

TRANTAFYLLOS 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* FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INDUSTRIELLE FOR LEAVE TO FILE A BRIEF IN SUPPORT OF
THE PLAINTIFFS' ANTICIPATED MOTIONS FOR SUMMARY JUDGMENT**

Fédération Internationale Des Conseils En Propriété Industrielle ("FICPI"), by undersigned counsel, moves for leave to file a brief as *amicus curiae* in support of plaintiffs SmithKline Beecham Corporation, SmithKline Beecham PLC, and Glaxo Group Limited's (collectively referred to as the "GSK Plaintiffs") and plaintiff Triantafyllos Tafas' anticipated motions for summary judgment. No oral argument is requested.

The GSK Plaintiffs and Mr. Tafas, by their respective counsel of record, have consented to the filing of this motion and FICPI's appearance as an *amicus*. The defendants have expressly declined to take a position, but agree that no hearing is necessary to decide this motion. FICPI requests that this motion be granted and its *amicus* brief be due in accordance with the briefing schedule as set by the proceedings in this matter.

I. INTEREST OF THE AMICUS CURIAE

Established in 1906, FICPI is a Switzerland-based international and non-political association of approximately 4,000 intellectual property attorneys from over eighty countries (including the United States). FICPI's members represent individual inventors as well as large, medium and small companies. One of the members' major roles is to advise inventors in intellectual property matters and secure protection for industrial innovation. FICPI supports predictable, balanced global protection of patents, the global harmonization of substantive patent law, and the interests of inventors and the U.S. Patent and Trademark Office ("the PTO") for recognizing a fair scope of patent protection consistent with the claimed invention.

FICPI is one of only two major world organizations that advises the World Intellectual Property Organization ("WIPO"), an intergovernmental organization dedicated to promoting and protecting intellectual property rights worldwide, on all intellectual property matters. In this capacity, FICPI members have attended Diplomatic Conferences concerning international intellectual property treaties and practices. WIPO's 180 member states (including the United States) comprise almost ninety percent of the world's countries. *See About WIPO*, at <http://www.wipo.int/about-wipo/en/>. As one of the sixteen specialized agencies of the United Nations system of organizations, WIPO administers intellectual property matters recognized by the U.N.'s member states and twenty-three international treaties concerning intellectual property.

See id. The United States is a member of the WIPO Standing Committee on the Law of Patents (“SCP”) and is involved with WIPO’s efforts to harmonize substantive patent law worldwide, including pursuant to a Substantive Patent Law Treaty, which currently is in draft form.¹

II. WHY AN AMICUS BRIEF IS DESIRABLE AND WHY THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE

As FICPI is largely comprised of patent practitioners representing foreign inventors and corporate entities, FICPI is poised to give the court the perspective of the international patent community. Because the instant case may potentially significantly affect the way foreign companies operate vis-à-vis their patent filing strategies, FICPI would like to voice concerns regarding the threat posed by PTO’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), and, in particular, Rule 1.78 regarding divisional practice. In November 2007, FICPI, assembled at its Executive Committee in Seville, Spain, adopted a Resolution regarding Divisional Patent Applications.² As *amicus curiae*, FICPI’s positions would address the issue of the PTO’s final rules on the divisional applications registration process and their general impact on the United States patent system.

¹ *See* Substantive Patent Law Harmonization, at <http://www.wipo.int/patent/law/en/harmonization.htm>.

² FICPI, EXCO/ES07/RES/003, November 4-7, 2007

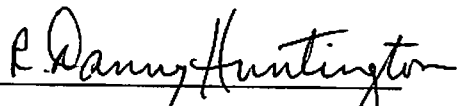
III. CONCLUSION

For the foregoing reasons, this Court should grant this motion for leave to file the attached *amicus curiae* brief.

Dated: January 2, 2008

Respectfully Submitted,

**Fédération Internationale Des Conseils
En Propriété Industrielle**

By: 
R. Danny Huntington (VA Bar #16407)
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806
(202) 373-6000

Counsel for Amicus Curiae

Of Counsel:
Maxim H. Waldbaum
Julie Busch
Henry L. Mann
Schiff Hardin LLP
900 Third Ave 23rd Floor
New York, NY 10022
(212) 753-5000

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January 2008, I filed the foregoing MOTION OF *AMICUS CURIAE* FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ INDUSTRIELLE FOR LEAVE TO FILE A BRIEF IN SUPPORT OF THE PLAINTIFFS' ANTICIPATED MOTIONS FOR SUMMARY JUDGMENT with the Clerk of the Court and served a true and correct copy to the following by email:

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

Counsel for GSK Plaintiffs

Joseph Dale Wilson, III
Kelley Drye & Warren LLP
Washington Harbour
3050 K Street NW Suite 400
Washington, DC 20007
Email: jwilson@kelleydrye.com

Counsel for Plaintiffs Tafas

Lauren A. Wetzler
United States Attorney's Office
2100 Jamison Ave.
Alexandria, VA 22314
Email: lauren.wetzler@usdoj.gov

Counsel for the Defendants

Thomas J. O'Brien
Morgan, Lewis & Bockius
1111 Pennsylvania Ave., NW
Washington, DC 20004
Email: to'brien@morganlewis.com

Counsel for Amicus American Intellectual Property Lawyers Association

Dawn-Marie Bey
Kilpatrick Stockton, LLP
700 13th Street, NW, Suite 800
Washington, DC 20005
Email: dbey@kslaw.com

Counsel for Amicus Hexas, LLC, The Roskamp Institute, Tikvah Therapeutics, Inc.

James Murphy Dowd
Wilmer Cutler Pickering Hale & Dorr LLP
1455 Pennsylvania Ave., NW
Washington, DC 20004
Email: james.dowd@wilmerhale.com

Counsel for Amicus Pharmaceutical Research and Manufactures of America

Rebecca Malkin Carr
Pillsbury Winthrop Shaw Pittman LLP
2300 N St NW
Washington, DC 20037
Email: rebecca.carr@pillsburylaw.com

and

Scott Jeffrey Pivnick
Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Blvd, Suite 400
McLean, VA 22102
Email: scott.pivnick@pillsburylaw.com

Counsel for Amicus Elan Pharmaceuticals, Inc.

Randal Karl Miller
Arnold & Porter LLP
1600 Tysons Blvd., Suite 900
McLean, VA 22102
Email: randall_miller@aporter.com

Counsel for Amicus Monsanto Company

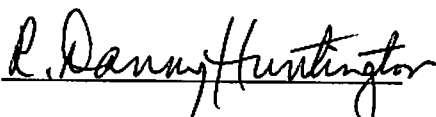
Charles Gorenstein
Michael K. Mutter
Birch, Stewart, Kolasch and Birch, LLP
8110 Gatehouse Rd., Suite 100 East
Falls Church, Virginia 22042
Email: cg@bskb.com

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

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

Counsel for Amicus Human Genome Sciences, Inc.

**Fédération Internationale Des Conseils En
Propriété Industrielle**

By: 

R. Danny Huntington (VA Bar # 16407)
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806
(202) 373-6000

Counsel for Amicus Curiae