

FILED

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

2007 AUG 22 P 4: 02

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

TRIANTAFYLLOS TAFAS,

Plaintiff,

v.

JON DUDAS, in his official capacity as
Under-Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office,
and the UNITED STATES PATENT AND
TRADEMARK OFFICE,

Defendants.

CIVIL ACTION: 1:07CV846

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Dr. Triantafyllos Tafas ("Plaintiff" or "Dr. Tafas"), through his counsel, Kelley Drye & Warren LLP, respectfully moves for an Order preliminarily enjoining Defendants, the United States Patent and Trademark Office (the "USPTO"), an administrative agency that is part of the United States Department of Commerce, and Jon W. Dudas, in his official capacity as United States Under-Secretary of Commerce for Intellectual Property and Director of the USPTO (collectively the "Defendants"), from implementing Sections 1.75 and 1.78 of certain new federal regulations published by the USPTO at 72 Fed. Reg. No. 161 on August 21, 2007 (with an effective date of November 1, 2007) entitled "Changes to Practice for Continuing Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications; Final Rule" (to be codified at 37 CFR Part 1 and sometimes collectively referred to

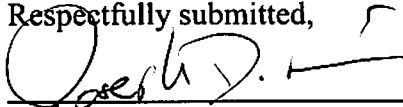
herein as the “Revised Rules”), on the grounds that Defendants exceeded their Congressionally delegated authority and unconstitutionally implemented these new regulations

As set forth more particularly in Plaintiff’s supporting Memorandum of Law and the Declaration of Dr. Tafas, Plaintiff is faced with irreparable injury and Defendants should be preliminarily enjoined from putting the Revised Rules into effect, pending a final decision on the merits of Plaintiff’s claims seeking a declaratory judgment that the Revised Rules are null, void, and without legal effect because they are inconsistent with the United States Constitution and other federal statutory law including, without limitation, the following: (1) Sections 120, 132 and 365 of the Patent Act (35 U.S.C. §§ 120, 132 and 365), inasmuch as Defendants exceeded the rule making authority delegated to the Defendants by Congress and the Revised Rules are contrary to the above statutory provisions; (2) the Administrative Procedure Act, Title 5 of the United States Code, particularly in failing to follow the mandates provided for in 5 U.S.C §§ 553(c) and 706(2), *inter alia*, by failing to consider all relevant matter presented during the rule making process and promulgating rules that are arbitrary, capricious, an abuse of discretion, not in accordance with law and in excess of the USPTO’s statutory jurisdiction and authority, and contrary to the U.S. Constitution; and, (3) Article I, Section 8, Cl. 8 of the United States Constitution, including by failing “to promote the progress of science and useful arts” and the Takings Clause of the Fifth Amendment, which prohibits the federal government from taking property without due process of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order in the proposed form included herewith, enjoining Defendants from implementing the Revised Rules and maintaining the *status quo* pending a final judgment of this Court on the merits, along with such, other, further and different relief as the Court deems just, equitable and proper.

Respectfully submitted,



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