

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

_____)	
TRIANTAFYLLOS TAFAS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07cv846 (JCC/TRJ)
)	
JON W. DUDAS, et al.,)	
)	
Defendants.)	
_____)	

CONSOLIDATED WITH

_____)	
SMITHKLINE BEECHAM)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:07cv1008 (JCC/TRJ)
)	
JON W. DUDAS, et al.,)	
)	
Defendants.)	
_____)	

**MOTION OF *AMICUS CURIAE* BIOTECHNOLOGY INDUSTRY ORGANIZATION
FOR LEAVE TO FILE A BRIEF IN SUPPORT OF
THE PLAINTIFFS’ ANTICIPATED MOTIONS FOR SUMMARY JUDGMENT**

The Biotechnology Industry Organization (“BIO”), 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’s anticipated motions for summary judgment.

BIO represents more than 1,100 biotechnology companies and organizations, from large multinational corporations to small research and development startups, in the United States and

throughout the world. BIO's members are involved in researching and developing biotechnology products in the areas of healthcare, food and agricultural, and industrial and environmental applications. As part of its activities, BIO advocates on behalf of its members to maintain a policy environment, including the patent laws and rules, that supports technological innovation and to assist its members in their efforts to advance biotechnology and grow their businesses. GlaxoSmithKline is a member of BIO. However, BIO represents a wide variety of biotechnology organizations, large and small, working in all fields of biotechnology. BIO has no stake in the GSK Plaintiffs or any of the other parties to this litigation. BIO seeks leave to participate as an *amicus* based upon its interest in avoiding changes to the patent rules that will irreparably damage the biotechnology industry, BIO members, and the public.

BIO's *amicus* brief would address the public interest prong of the plaintiffs' requests for injunctions permanently enjoining the implementation of the Patent and Trademark Office'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) [hereinafter "Final Rules"] (to be codified at 37 C.F.R. pt. 1), and other issues raised by the parties during summary judgment about which BIO could provide useful information. The biotechnology industry relies heavily on patent law and the current, established Patent and Trademark Office ("PTO") rules of practice to obtain adequate coverage of its inventions and to attract financing for products that often take more than a decade to reach the market. BIO is deeply concerned about the irreversible loss of patent rights and the disincentives to innovation that the Final Rules will cause. BIO is uniquely positioned to provide the Court with information and perspective on the Final Rules' substantial

and disproportionate affect on biotechnology organizations and products that the parties cannot, or may not have the incentive to, provide.

Counsel for the GSK Plaintiffs and Mr. Tafas have consented to the filing of this motion. The defendants take no position on this motion. However, all parties agree that the motion should be decided without oral argument. If the current schedule in the Tafas case is adopted in the GSK case, BIO requests that its amicus brief be due on November 14, 2007, one week after the current due date for Mr. Tafas's motion for summary judgment. If the Tafas schedule is modified or a different schedule is adopted in the GSK case, BIO requests that its brief be due one week after the GSK Plaintiffs file their summary judgment motion.

WHEREFORE, for the reasons stated herein and in its accompanying memorandum in support, BIO respectfully requests the Court to grant it leave to file an *amicus* brief in support of the plaintiffs' anticipated summary judgment motions.

Respectfully submitted,

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October 29, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October 2007, I caused a copy of the foregoing Motion of *Amicus Curiae* Biotechnology Industry Organization for Leave to File a Brief in Support of the Plaintiffs' Motions for Summary Judgment and accompanying proposed order was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to the following:

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