

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

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

CONSOLIDATED WITH

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

MOTION OF AMICUS CURIAE ELAN PHARMACEUTICAL CORPORATION FOR
LEAVE TO FILE ITS BRIEF IN SUPPORT OF THE "GSK" PLAINTIFFS' MOTION
FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Elan Pharmaceuticals, Inc., on behalf of itself and its parent and affiliates (herein
collectively referred to as "Elan"), by the undersigned counsel, moves for leave to file its brief as
amicus curiae in support of SmithKline Beecham Corporation, SmithKline Beecham PLC and
Glaxo Group Limited's Motion for a Temporary Restraining Order and Preliminary Injunction
("Brief").

Elan is a biotechnology company that is focused on discovering, developing, manufacturing and marketing advanced therapies in neurology, autoimmune diseases, and severe pain. Elan wishes to submit its *amicus* Brief addressing the likelihood of success on the merits, irreparable harm and public interest prongs of the pending Motion for Temporary Restraining Order and Preliminary Injunction. Elan concurs with GSK's assertion that the "Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications," 72 Fed. Reg. 46716 (Aug. 21, 2007) (to be codified at 37 C.F.R. pt. 1) (hereinafter "Final Rules") are *ultra vires*. Elan's Brief expands on GSK's position that the Final Rules improperly shift the burden of examining a patent application from the U.S. Patent and Trademark Office ("PTO") to the applicant. This burden shifting is contrary to law and serves as a basis to overturn the Final Rules.

Elan has contacted counsel for plaintiffs GSK and Tafas who consent to the filing of Elan's *amicus* Brief. Counsel for defendants John Dudas and the PTO oppose Elan's Motion and the filing of its Brief. Elan's Motion is filed a mere 14 days after GSK initially filed its Motion for Preliminary Injunction and is therefore timely.

Elan's proposed Brief is attached as Exhibit A to this Motion and Elan requests that the Court accept the Brief for filing without requiring a separate filing. A proposed Order is attached.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October 2007, I electronically filed in Case Nos. 1:07cv1008 and 1:07cv846 (JCC/TRJ) the foregoing “**MOTION OF AMICUS CURIAE ELAN PHARMACEUTICAL CORPORATION FOR LEAVE TO FILE ITS BRIEF IN SUPPORT OF THE ‘GSK’ PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**” using the CM/ECF system and that service was thereby accomplished on:

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I further certify that on this 29th day of October 2007, I caused a copy of the foregoing to be served by U.S. Mail, postage prepaid, upon:

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