

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

TRIANAFYLLOS TAFAS,

Plaintiff,

v.

JON W. 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 (JCC/TRJ)
and Consolidated Case (below)**

SMITHKLINE BEECHAM CORPORATION,

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: 1:07cv1008 (JCC/TRJ)

**PLAINTIFF TRIANTAYLLOS TAFAS'S
OBJECTION TO DEFENDANTS' WITHDRAWAL
OF ITS PARTIAL MOTION TO DISMISS BEING WITHOUT PREJUDICE**

Plaintiff Dr. Triantafyllos Tafas (“Plaintiff” or “Dr. Tafas”), through his counsel, Kelley Drye & Warren LLP, objects to Defendants’ withdrawal of its Partial Motion to Dismiss (Dkt. No. 17) as being “without prejudice to Defendants raising any of the arguments in that motion...at later stages of the proceedings.” *See* Notice of Withdrawal (Dckt. No. 55). While Dr. Tafas does not object to the withdrawal of that motion—especially since it was meritless to begin with—it would clearly be unfair to Dr. Tafas if the withdrawal is without prejudice.

The underlying merits of the arguments have been fully briefed. It would be unfair for Defendants to put Dr. Tafas through another expensive process of briefing the issues raised in the withdrawn Partial Motion to Dismiss given that Dr. Tafas has been through at expensive process already, only to have Defendants pull the rug out from under him on the eve of submitting the matter for decision, particularly with Defendants simultaneously purporting to reserve the right to litigate all the same issues later in the case.

Of course, Dr. Tafas has no substantive objection to Defendants' motion to dismiss being withdrawn from the case. However, he welcomes a genuine withdrawal of the motion. Otherwise, he may be unfairly shackled with the burden and expense of having to address the arguments raised in the Motion to Dismiss if Defendants are allowed to simply defer those to some indefinite future date. It is furthermore unclear from the statement in Defendant's notice of withdrawal, and thus unfair to Dr. Tafas, as to what pleading Defendants intends to file in lieu of the motion to dismiss (whether the exact same arguments will be raised in the new pleading) and when such pleading will be filed.

Respectfully submitted,

s/ Joseph D. Wilson
Joseph D. Wilson (VSB # 43693)
Steven J. Moore, Esq. (*pro hac vice*)
James E. Nealon, Esq. (*pro hac vice*)
KELLEY DRYE & WARREN LLP
Washington Harbor, Suite 400
3050 K Street, NW
Washington, DC 20007
Telephone: (202) 342-8400
Facsimile: (202) 342-8451
E-mail: jwilson@kelleydrye.com

Counsel for Plaintiff Triantafyllos Tafas

Of Counsel:

William R. Golden Jr., Esq.
KELLEY DRYE & WARREN LLP
101 Park Avenue
New York, New York 10178-0002
Telephone: (212) 808-7992
Facsimile: (212) 808-7897
E-mail: wgolden@kelleydrye.com
smoore@kelleydrye.com
jnealon@kelleydrye.com

-- and --

David Frulla, Esq.
Shaun Gehan, Esq. (*pro hac vice*)
KELLEY DRYE & WARREN LLP
Washington Harbor, Suite 400
3050 K Street, NW
Washington, DC 20007
Telephone: (202) 342-8400
Facsimile: (202) 342-8451
Email: dfrulla@kelleydrye.com
sgehan@kelleydrye.com

Dated: November 8, 2007

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Elizabeth Marie Locke
Kirkland & Ellis LLP
655 15th Street, NW
Suite 1200
Washington, DC 20005
Email: elocke@kirkland.com

Craig Crandell Reilly
Richard McGettingan Reilly & West PC
1725 Duke Street
Suite 600
Alexandria, VA 22314
Email: craig.reilly@rmrwlaw.com

Daniel Sean Trainor
Kirkland & Ellis LLP
655 15th Street, NW
Suite 1200
Washington, DC 20005
Email: dtrainor@kirkland.com

*Counsel for Plaintiffs SmithKline Beecham Corp.
d/b/a GlaxoSmithKline, SmithKline Beecham PLC,
and Glaxo Group Limited, d/b/a GlaxoSmithKline*

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

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

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

*Counsel for Putative Amicus Pharmaceutical
Research and Manufacturers of America*

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

*Counsel for Putative Amicus Biotechnology
Industry Organization*

Rebecca M. Carr
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, NW
Washington, DC 20037
Rebecca.carr@pillsburylaw.com

Scott J. Pivnick
Pillsbury Winthrop Shaw Pittman
1650 Tysons Boulevard
McLean, Virginia 22102-4856
Scott.pivnick@pillsburylaw.com

*Counsel for Putative Amicus Elan
Pharmaceuticals, Inc.*

Lauren A. Wetzler
Assistant United States Attorney
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22134
Tel: (703) 299-3752
Fax: (703) 299-3983
Lauren.Wetzler@usdoj.gov

Counsel for All Defendants

/s/ Joseph D. Wilson

Joseph D. Wilson (VSB # 43693)

KELLEY DRYE & WARREN LLP

Washington Harbor, Suite 400

3050 K Street, NW

Washington, DC 20007

Telephone: (202) 342-8400

Facsimile: (202) 342-8451

E-mail: jwilson@kelleydrye.com

Counsel for Plaintiff Triantafyllos Tafas