

Defendants' Exhibit 5

Wetzler, Lauren

From: Wetzler, Lauren
Sent: Thursday, November 08, 2007 2:08 PM
To: cmizzo@kirkland.com; 'Nealon, James'
Cc: Price, Andrew (USAVAE); jdesmarais@kirkland.com
Subject: compromise consent order

Chris and Jim,

Attached please find a proposed briefing schedule that attempts to find a middle ground between the parties. Accommodating your requests, we will agree to simultaneous briefing and will not ask the court to substitute our summary judgment motion for our answer. We also will not ask you to file any briefs before late December. However, for the reasons I've previously explained, it is our firm position that there is no basis for discovery in this APA case and that the briefing should be more expeditious than the schedule you proposed.

Please let me know by **2 p.m. tomorrow** (Friday) whether you will agree to this compromise consent order. If you have not agreed to it by then, we will have no choice but to pursue relief from the Court before more time is lost. Thank you for your consideration.

Lauren



Summary Judgment
Consent Order...

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

TRIANTAFYLLOS TAFAS,

Plaintiff,

v.

JON W. DUDAS, *et al.*,

Defendants.

CIVIL ACTION: 1:07-CV-846 (JCC/TRJ)

CONSOLIDATED WITH

**SMITHKLINE BEECHAM
CORPORATION, *et al.*,**

Plaintiff,

v.

JON W. DUDAS, *et al.*,

Defendants.

CIVIL ACTION: 1:07-CV-1008 (JCC/TRJ)

CONSENT ORDER REGARDING SUMMARY JUDGMENT BRIEFING SCHEDULE

WHEREAS, counsel for Plaintiffs Triantafyllos Tafas, SmithKline Beecham Corp., d/b/a GlaxoSmithKline, SmithKline Beecham PLC, and Glaxo Group Limited, d/b/a GlaxoSmithKline (“Plaintiffs”) and counsel for Defendants Jon W. Dudas and the United States Patent and Trademark Office (“Defendants”; “Plaintiffs” and “Defendants” are collectively referred to as the “Parties”) have conferred and agreed upon a summary judgment briefing schedule; it is hereby

ORDERED:

1. Plaintiffs and Defendants shall file cross-motions for summary judgment on or before Thursday, December 20, 2007. The Parties shall meet and confer to agree upon a page extension for the Court's approval.

2. Any and all *amicus curiae* who wish to file briefs in support of the parties' cross-motions for summary judgment shall file their briefs no later than Thursday, December 20, 2007. Each brief of *amicus curiae* shall not exceed twenty pages in length.

3. Plaintiffs and Defendants shall file briefs in opposition to the motions for summary judgment, and in response to the briefs of *amicus curiae*, on or before Thursday, January 24, 2008. The parties shall meet and confer to agree upon a page extension for the Court's approval.

4. Plaintiffs and Defendants shall file any rebuttal briefs on or before Thursday, February 7, 2008. If necessary, the parties shall meet and confer to agree upon a page extension for the Court's approval.

5. The Parties shall notice the hearing on their cross-motions for summary judgment for Friday, February 15, 2007.

6. No summary judgment briefs by the Parties or *amicus curiae* shall be filed other than those specifically authorized by this Order.

7. There shall be no discovery, and any discovery filed or served hereto shall be deemed withdrawn.

Dated: _____

Hon. James C. Cacheris
United States District Judge

WE AGREE TO THIS:

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SmithKline Beecham plc, and Glaxo Group
Limited d/b/a GlaxoSmithKline*