

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

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

CONSOLIDATED WITH

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

**DEFENDANTS' OPPOSITION TO PLAINTIFF DR. TAFAS'S MOTION TO COMPEL**

Defendants Jon W. Dudas and the United States Patent and Trademark Office (collectively "USPTO") hereby oppose "Plaintiff Dr. Tafas's Motion to Compel," Dkt. No. 80, which seeks to compel (1) a privilege log on the administrative record, and (2) inclusion in the administrative record of all deliberative materials.

Tafas's motion is a redundancy, and it contravenes the Court's clear directive on briefing at the November 16, 2007 hearing. Prior to Tafas filing this motion, the parties had fully briefed the question of whether the USPTO was required to produce a privilege log. Pursuant to this

Court's directive at the hearing, Tafas filed a supplemental brief on the privilege log issue, Dkt. No. 73, and the USPTO filed its response, Dkt. No. 74. See Dkt. No. 74, Ex. 1, p. 46 ("I would like something from plaintiffs by close of Monday. I would like something from defendants by close of business Tuesday."). GlaxoSmithKline ("GSK") filed what it styled a "Motion for an Entry of an Order Requiring Defendants to Submit a Privilege Log,"<sup>1</sup> Dkt. Nos. 70-72, which the USPTO opposed in its response to Tafas's filing. Dkt. No. 73. Tafas has now apparently decided that he liked GSK's approach better and has tried to mimic it, ostensibly "to assure the record in this consolidated action is complete and that there is a procedural vehicle in place for the Court to order the previously requested relief." Motion to Compel, p. 2. In view of the amount of paper Plaintiffs dumped on this Court and the USPTO on the eve of Thanksgiving, these excuses merit no response. The USPTO respectfully relies on its prior brief on the privilege log issue to oppose Tafas's newest request for a privilege log. See Dkt. No. 74.

With respect to the second relief sought – inclusion of all deliberative materials in the administrative record – the USPTO again respectfully relies on the discussion in its privilege log brief of why deliberative materials do not belong in an administrative record and why requiring even just a privilege log of those documents is an undue burden. See Dkt No. 74, pp. 4-8. The USPTO has further addressed the impropriety of including deliberative materials in an administrative record in the omnibus memorandum that it has submitted contemporaneously with this opposition, see Dkt. No. 83, pp. 6-8.

For the reasons stated herein and in the above-referenced memoranda, the Court should

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<sup>1</sup> The Court should strike any reply memoranda that GSK or Tafas attempts to file in connection with the privilege log issue on the grounds that it evades the Court's briefing order at the November 16, 2007 hearing.

deny “Plaintiff Dr. Tafas’s Motion to Compel.”

Respectfully submitted,

CHUCK ROSENBERG  
UNITED STATES ATTORNEY

By: /s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 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:

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