

**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.	)	
_____	)	

**OBJECTION TO PLAINTIFF TAFAS  
SUBMITTING TRANSCRIPTS OF AUDIO-VISUAL CLIPS**

Defendants Jon W. Dudas and the United States Patent and Trademark Office (collectively “USPTO”) respectfully object to Plaintiff Triantafyllos Tafas being permitted to submit transcripts of audio and visual “clips” at tomorrow’s hearing. The USPTO understands that the Court informed Tafas that he would not be allowed to play the clips, as requested in his e-mail to chambers at 2:12 p.m. today, but that he could submit transcripts of the clips along with affidavits certifying the transcripts’ authenticity. See Ex. 1. The USPTO objects to Tafas being

permitted to do so on the following grounds:

1. Lack of Notice: Although Tafas had previously provided the USPTO with the video clips referenced in Tafas's e-mail to chambers, USPTO counsel have never before heard the audio clips. At the time of this filing, USPTO counsel still have not received these audio clips from Tafas counsel despite requesting them. Contrary to the Local Rules, Tafas counsel did not meet and confer with USPTO counsel before making his request to the Court so as to put the USPTO on notice of their intent to use these clips at the hearing. The USPTO is prejudiced by the lack of notice because it has not had an opportunity to consult with the purported speakers regarding these clips or to do any independent investigation of their authenticity.

2. Lack of Completeness: To date, Plaintiffs have failed to provide the full videos or audio tapes of any of the clips they seek to use, or a transcript of the entire presentations. Therefore, the USPTO is unable to determine whether the clips Tafas has carefully selected have been taken out of context, or are otherwise inconsistent with other statements made in the presentations. Pursuant to Federal Rule of Evidence 106, the Court should not permit transcripts of only the selected clip. See Beech Aircraft Corp. v. Rainey, 488 U.S. 153, 171-72 (1988) ("Rule 106 of the Federal Rules of Evidence, which authorizes the introduction into evidence of the remainder of a writing when a part of the writing is introduced, is underlain by and constitutes a partial codification of the common-law doctrine of completeness, which addresses the concerns that a court not be misled because portions of a statement are taken out of context and that an out-of-context statement may create such prejudice that it is impossible to repair by a subsequent presentation of additional material.").

3. Lack of Authentication: While the Court is requiring Tafas counsel to authenticate that the transcripts of the clips are accurate, Tafas has never established that the video tapes and

audio tapes from which the transcripts are being made are themselves authentic. Accordingly, the USPTO objects pursuant to Federal Rule of Civil Procedure 901.

4. Lack of Relevance: The material that Tafas seeks to introduce tomorrow is also irrelevant under Federal Rule of Evidence 401 and 402. The video clips that undersigned counsel has seen regarding statements by former Solicitor and Deputy General Counsel John Whealan do not remotely suggest bad faith on the part of the USPTO. A showing of bad faith requires meeting an extremely high standard. See Defendants' Omnibus Memorandum in Opposition to Plaintiffs' Requests for Discovery Beyond the Administrative Record, Dkt. No. 83, pp. 10-11. Even if one were to understand the video clips, taken out of context, to mean what Tafas suggests they say – i.e. that “the PTO promulgated the rules at issue to change the patent system, tried to get the rules promulgated in an expedited fashion and designed the rules to dissuade patent applicants from submitting patent claims,” Ex. 1 – none of these statements suggests that the USPTO acted in bad faith in promulgating rules aimed at improving the efficiency of the patent application process. The USPTO is unable to comment on the relevance of the audio clips because it has not heard them; however, the description Tafas counsel gave in his e-mail to Chambers strongly suggests that they, too, fail to evidence bad faith. See Ex. 1.

For these reasons, the USPTO respectfully objects to the use of the referenced transcripts at tomorrow's hearing. In view of the short time frame that undersigned counsel had to write this objection, the USPTO respectfully reserves the right to object on any other grounds at tomorrow's hearing.

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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