

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

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

CONSOLIDATED WITH

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

**MOTION OF *AMICUS CURIAE* MONSANTO COMPANY
 FOR LEAVE TO FILE A BRIEF IN SUPPORT OF
THE PLAINTIFFS’ ANTICIPATED MOTIONS FOR SUMMARY JUDGMENT**

Monsanto Company (“Monsanto”), by undersigned counsel, moves for leave to file a brief as *amicus curiae* in support of plaintiffs SmithKline Beecham Corporation, SmithKline Beecham PLC, and Glaxo Group Limited’s (collectively referred to as the “GSK Plaintiffs”) and plaintiff Triantafyllos Tafas’s anticipated motions for summary judgment.

Monsanto, along with its subsidiaries, is a leading global provider of agricultural products for farmers. The seeds, biotechnology trait products, and herbicides that Monsanto researches,

develops, and brings to market provide farmers with solutions that improve productivity, reduce the costs of farming, produce better feed for animals, and produce better foods for consumers. Monsanto spends over \$2 million per day in research and development to support and improve its businesses. Patents are a critical component of Monsanto's research and development activities and a significant factor in Monsanto's willingness to devote such substantial resources to these activities.

Monsanto's *amicus* brief would address the balance of hardships and the public interest prongs of the plaintiffs' requests for injunctions permanently enjoining the implementation of the Patent and Trademark Office's final rules published on August 21, 2007, Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications, 72 Fed. Reg. 46,716 (Aug. 21, 2007) [hereinafter "Final Rules"] (to be codified at 37 C.F.R. pt. 1). In particular, Monsanto will address the effects of those portions of the Final Rules related to limiting applicants to five independent claims and twenty-five total claims unless the applicant files an "examination support document" ("ESD"), not only on patent applications and patent prosecution, but also in subsequent proceedings, such as litigation, related to affected patents. Monsanto has no stake in any of the plaintiffs in this case. Monsanto seeks leave to participate as an *amicus* based upon its interest in avoiding changes to the patent rules, particularly those described above, that will irreparably harm its business, the biotechnology industry generally, and the public.

Monsanto is aware that Defendants' Motion for Issuance of Proposed Briefing Schedule in Lieu of a Standard Initial Scheduling Order, Dkt. No. 60, is currently pending and that the hearing on this motion has been continued until November 27, 2007, Minute Entry, Dkt. No. 68. If Monsanto's motion for leave is granted, it requests that its *amicus* brief be due one week after

plaintiffs' motions for summary judgment are due. Although Monsanto believes that one week between the filing of the plaintiffs' summary judgment motions and the filing of *amicus* briefs in support of plaintiffs' motions is appropriate, it will abide by and not object to the due date for *amicus* briefs in support of the plaintiffs' summary judgment motions as provided in the schedule that will be entered by the Court. Counsel for the GSK Plaintiffs has consented to the filing of this motion. Counsel for Mr. Tafas has consented to the filing of this motion, except, at this juncture, he takes no position with respect to Monsanto's request for a due date one week after the due date for plaintiffs' motions for summary judgment. The defendants take no position on this motion. However, all parties agree that the motion should be decided without oral argument.

WHEREFORE, for the reasons stated herein and in its accompanying memorandum in support, Monsanto respectfully requests the Court to grant it leave to file an *amicus* brief in support of the plaintiffs' anticipated summary judgment motions in accordance with the briefing schedule to be entered by the Court.

Respectfully submitted,

By: _____ /s/
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ATTORNEYS FOR *AMICUS CURIAE*
MONSANTO COMPANY

November 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November 2007, I caused a copy of the foregoing Motion of *Amicus Curiae* Monsanto Company for Leave to File a Brief in Support of the Plaintiffs' Anticipated Motions for Summary Judgment and accompanying proposed order to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to the following:

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