

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* INTELLECTUAL PROPERTY INSTITUTE OF
WILLIAM MITCHELL COLLEGE OF LAW
FOR LEAVE TO FILE A BRIEF IN SUPPORT OF
THE PLAINTIFFS' ANTICIPATED MOTIONS FOR SUMMARY JUDGMENT**

The Intellectual Property Institute of William Mitchell College of Law (the “Institute”), 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’ anticipated motions for summary judgment. No oral argument is requested.

The Intellectual Property Institute is part of William Mitchell College of Law, which is a not-for-profit entity. The mission of the Institute is to foster and protect innovation through educational, research, and service initiatives. Among its activities, the Institute advocates for the responsible development and reform of intellectual property law, including the patent laws and the patent system of the United States. A purpose of the Institute is to raise issues and arguments in light of public policy and the best interests of the patent system as a whole.

The Institute's *amicus* brief would address the legality of the United States 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) (to be codified at 37 C.F.R. pt. 1). As *amicus curiae*, the Institute's positions would address the impact of the USPTO's final rules on the structure of the United States patent system, the whether those final rules are consistent with other legal authorities. The Institute expects that points it raises will not substantially overlap those made by the plaintiffs and other *amici*.

The GSK Plaintiffs and Mr. Tafas, by their respective counsel of record, have consented to the filing of this motion and the Institute's appearance as an *amicus*. The defendants have been approached but have declined to take a position. The Institute requests that its *amicus* brief be due in accordance with the briefing schedule as set by the proceedings in this matter.

WHEREFORE, for the reasons stated herein, the Intellectual Property Institute of the William Mitchell College of Law respectfully requests the Court to grant it leave to file an

amicus brief in support of the plaintiffs' anticipated summary judgment motions. A proposed order is submitted herewith.

Respectfully submitted,

Birch, Stewart, Kolasch and Birch, LLP

Date: November 27, 2007

By: _____/s/
Charles Gorenstein (Va. Bar No. 28,606)
Michael K. Mutter (Va. Bar No. 21,172)
8110 Gatehouse Rd
Suite 100 East
Falls Church, Virginia 22042
Ph. (703) 205-8000
Fax (703) 205-8050
cg@bskb.com

Counsel for amicus curiae
Intellectual Property Institute of the
William Mitchell College of Law

Counsel
R. Carl Moy
Jay Erstling
Intellectual Property Institute of the
William Mitchell College of Law
875 Summit Avenue
St. Paul, Minnesota 55105
Ph. (651) 227-9171
Fax (651) 290-6406

Of-Counsel:
Niels Schaumann
Ken Port
Intellectual Property Institute of the
William Mitchell College of Law
875 Summit Avenue
St. Paul, Minnesota 55105
Ph. (651) 227-9171
Fax (651) 290-6406

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November 2007, I caused a copy of the foregoing Motion of *Amicus Curiae* Intellectual Property Institute of William Mitchell College of Law for Leave to File a Brief in Support of the Plaintiffs' Anticipated Motions for Summary Judgment and accompanying proposed order was electronically filed with the clerk of the Court using the CM/ECF system, which will send a notification of such filing to the following:

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

and

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

Counsel for GSK Plaintiffs

Joseph Dale Wilson, III
Kelley Drye & Warren LLP
Washington Harbour
3050 K Street NW Suite 400
Washington, DC 20007
Email: jwilson@jekketdrye.com

Counsel for Plaintiff Tafas

Lauren A. Wetzler
United States Attorney's Office
2100 Jamison Ave.
Alexandria, VA 22314
Email: Lauren.wetzler@usdoj.gov

Counsel for the Defendants

Thomas J. O'Brien
Morgan, Lewis & Bockius
1111 Pennsylvania Ave., 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

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

James Murphy Dowd
Wilmer Cutler Pickering Hale & Dorr LLP
1455 Pennsylvania Ave., NW
Washington, DC 20004

Counsel for Putative Amicus Pharmaceutical Research and Manufactures of America

Rebecca Malkin Carr
Pillsbury Winthrop Shaw Pittman LLP
2300 N St NW
Washington, DC 20037

and

Scott Jeffrey Pivnick
Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Blvd
Suite 400
McLean, VA 22102

Counsel for Putative Amicus Elan Pharmaceuticals, Inc.

Randall Karl Miller
Arnold & Porter LLP
1600 Tysons Blvd.
Suite 900
McLean, VA 22102

Counsel for Putative Amicus Monsanto Company

By: _____/s/

Charles Gorenstein (Va. Bar No. 28,606)

Michael K. Mutter (Va. Bar No. 21,172)

8110 Gatehouse Rd

Suite 100 East

Falls Church, Virginia 22042

Ph. (703) 205-8000

Fax (703) 205-8050

cg@bskb.com

Counsel for amicus curiae

Intellectual Property Institute of the

William Mitchell College of Law