

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

SMITHKLINE BEECHAM)
CORPORATION,)
d/b/a GLAXOSMITHKLINE,)
SMITHKLINE BEECHAM PLC, and)
GLAXO GROUP LIMITED,)
d/b/a/ GLAXOSMITHKLINE,)

Civil Action No. 1:07cv1008 (JCC/TRJ)

Plaintiffs,)

v.)

JON DUDAS, in his official capacity as)
Under-Secretary of Commerce for)
Intellectual Property and Director of the)
United States Patent and Trademark Office,)
and)

UNITED STATES PATENT AND)
TRADEMARK OFFICE,)

Defendants.)

**DEFENDANTS’ MOTION TO STRIKE EXHIBIT E OF THE MEMORANDUM IN
SUPPORT OF PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Defendants Jon W. Dudas, in his official capacity as Under-Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the United States Patent and Trademark Office respectfully move the Court to strike Exhibit E of the Motion for a Temporary Restraining Order and Preliminary Injunction filed by Plaintiffs SmithKline Beecham Corp. d/b/a GlaxoSmithKline, SmithKline Beecham PLC, and Glaxo Group Limited, d/b/a GlaxoSmithKline. Exhibit E—the declaration of Harry F. Manbeck, Jr.—should be stricken because it (1) constitutes improper expert testimony under Federal Rule of Evidence

702, (2) wrongfully introduces evidence outside the administrative record in an action under the Administrative Procedures Act, 5 U.S.C. §§ 701-706, for purposes of challenging the merits of agency action; and (3) causes Plaintiffs to exceed the page limitations of Local Rule 7(F) by eighteen pages.

A proposed order is attached for the convenience of the Court.

Respectfully submitted,

CHUCK ROSENBERG
UNITED STATES ATTORNEY

By: _____/s/_____

Lauren A. Wetzler
R. Joseph Sher
Ralph Andrew Price Jr.
Assistant United States Attorneys
Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: 703-299-3752
Fax: 703-299-3983
Lauren.Wetzler@usdoj.gov

Counsel for All Defendants

OF COUNSEL:
James A. Toupin
General Counsel

Stephen Walsh
Acting Deputy General Counsel
and Solicitor

William Covey
Deputy General Counsel

William G. Jenks
Janet A. Gongola
William LaMarca
Associate Solicitors

Jennifer M. McDowell
Associate Counsel

United States Patent and Trademark Office

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 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:

Elizabeth Marie Locke
Kirkland & Ellis LLP
655 15th St NW
Suite 1200
Washington, DC 20005
Email: elocke@kirkland.com

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

Counsel for Plaintiffs SmithKline Beecham Corp. d/b/a GlaxoSmithKline, SmithKline Beecham PLC, and Glaxo Group Limited, d/b/a GlaxoSmithKline

_____/s/_____

Lauren A. Wetzler

Assistant United States Attorney

Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue

Alexandria, Virginia 22314

Tel: 703-299-3752

Fax: 703-299-3983

Lauren.Wetzler@usdoj.gov

Counsel for All Defendants