

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

TRIANAFYLLOS TAFAS, )  
 )  
 Plaintiff, )  
 )  
 v. ) 1:07cv846(JCC/TRJ)  
 )  
 JON. W. DUDAS, et al. )  
 )  
 Defendants. )

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CONSOLIDATED WITH

SMITHKLINE BEECHAM CORPORATION, et al.)  
 )  
 Plaintiffs, )  
 )  
 v. ) 1:07cv1008(JCC/TRJ)  
 )  
 JON W. DUDAS, et al. )  
 )  
 Defendants. )

**MEMORANDUM IN SUPPORT OF MOTION OF *AMICUS CURIAE*  
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION FOR LEAVE  
TO FILE ITS BRIEF IN SUPPORT OF THE “GSK” PLAINTIFFS’ MOTION FOR  
A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The American Intellectual Property Law Association (“AIPLA”) has moved for leave to file its brief as *amicus curiae* in support of plaintiffs Smithkline Beecham Corporation, Smithkline Beecham PLC and Glaxo Group Limited’s Motion for a Temporary Restraining Order and Preliminary Injunction. This memorandum is submitted in support of that motion.

AIPLA is a national association founded more than 100 years ago and is now comprised of more than 17,000 members interested in all areas of intellectual property law. AIPLA

members include attorneys employed in private practice and by corporations, universities and government. AIPLA members represent both owners and users of intellectual property across the entire business spectrum, from very large corporations to individual inventors and in essentially all areas of technology. AIPLA has long been involved in advocacy of positions adopted by its Board of Directors as *amicus curiae* before the United States Court of Appeals for the Federal Circuit and the United States Supreme Court, as well as, on rare occasions, before state and federal district courts. AIPLA has also been a long-time leader in the area of professional development for members of the intellectual property community. The full scope and extent of the AIPLA's activities is contained in its website at [aipla.org](http://aipla.org). AIPLA has no stake in any of the parties to this litigation or the result of this case, other than its interest in avoiding irreparable injury to its members and the technology community.

The decision to allow a non-party to participate as *amicus curiae* comes within the broad discretion of the court. *DeJulio v. Georgia*, 127 F. Supp. 2d 1274, 1284 (N.D. Ga. 2001). *Accord Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007). "A court may grant leave to appear as an amicus if the information offered is 'timely and useful.'" *Waste Mgmt. of Pennsylvania v. City of York*, 162 F.R.D. 34 (M.D. Pa. 1995); *Fluor Corp. & Affiliates v. United States*, 35 Fed. Cl. 284, 285 (1996) (finding that filing of *amicus* brief in midst of parties' briefing of cross-motions for summary judgment was timely). *Amicus curiae* briefing should be allowed where, as here, the *amicus curiae* can "offer insights not available from the parties" or can provide "unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Citizens Against Gambling*, 471 F. Supp. 2d. at 311 (internal quotation marks and citations omitted).

AIPLA wishes to submit a brief addressing the public interest prong of the pending motion for injunctive relief. In short, AIPLA would like to explain how the community of users of the United States patent system will be irreparably harmed if the new Rules are implemented as planned on November 1, 2007. AIPLA believes it possesses special information and a unique perspective on this issue not otherwise available to the Court, because of, among other things, its long involvement and focus on patents and patent law, inputs routinely provided from many of its 17,000 members (a significant percentage of whom are patent practitioners ) during meetings and throughout the year and its many committees dealing with intellectual property law. The brief is attached hereto. AIPLA asks the Court to deem it filed without the need for a separate filing.

AIPLA is authorized to state that counsel for the GSK Plaintiffs and Mr. Tafas have consented to the filing of this brief. Defendants oppose the instant motion on the ground it comes too late, and instead should have been filed around the time the GSK Plaintiffs filed their motion. AIPLA, however, represents to the Court that it had no advance knowledge about the pending motion and acted as quickly as this large volunteer organization could manage.

## CONCLUSION

For all of the foregoing reasons, the American Intellectual Property Law Association requests that the Court grant its motion for leave, permit the filing of the *amicus* brief, and deem it filed without the need for a separate filing, in accordance with the proposed Order submitted with the motion.

Respectfully submitted,

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/s/  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October 2007, I electronically filed in Case No. 1:07cv1008 (JCC/TRJ) the foregoing Memorandum In Support Of Motion Of *Amicus Curiae* American Intellectual Property Law Association For Leave To File Its Brief In Support Of The "GSK" Plaintiffs' Motion For A Temporary Restraining Order And Preliminary Injunction using the CM/ECF system and that service was thereby accomplished on:

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I further certify that on this 25th day of October 2007, I caused a copy of the foregoing to be served by hand delivery upon:

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