

publicly traded, early stage companies, each of the *amici* depend on outside investment to fund their technology development and business operations. Because all of the *amici* rely heavily on the expectation of securing full and complete patent protection for their inventions to attract (and ultimately recoup) this crucial investment, they will be injured significantly if the New Rules are permitted to go into effect. For at least this reason, while the *amici* may differ in size and other respects from GSK, the detrimental impact of the New Rules on their respective businesses will be equally profound.

The *amici* further share the view that the New Rules will retard rather than “promote the Progress of Science”, chill investment in technology and innovation, and disadvantage vital economic and social interests -- results which are wholly inconsistent with the language, purpose and policies of our Constitution and the Patent Act. *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 480-81 (1974). Accordingly, this motion and brief are being submitted in support of GSK’s motion for a TRO and preliminary injunction against implementation of the New Rules which -- in contravention of the language, purpose and policies of our Constitution and Patent laws (35 U.S.C. et seq.) -- place limits on the rights of inventors in terms of, *inter alia*, the number of RCEs/continuation applications and patent claims that can be filed to secure the exclusive rights to their disclosed inventions.

Hexas is an Alexandria, Virginia, private company that develops and licenses technologies in the field of advanced materials and manufacturing. Hexas has a growing portfolio of patents based on its evolving proprietary system called Reflexive Materials Technologies (RMT™). RMT has a wide range of structural/weight-carrying (e.g., aerospace, energy, automotive, medical, and construction industries) and non-structural (e.g., pharmaceutical, food, cosmetics, filtration, and agricultural industries) applications. Hexas’

patent portfolio is of vital importance to attracting the investment needed to fund the development of its technology into commercial products. Currently, Hexas has a series of patent applications pending before the PTO which will be directly impacted by the retroactivity of the New Rules. Hexas also hopes to file additional applications with the PTO for many more years based on continued development of RMT.

The Roskamp Institute is a Sarasota, Florida non-profit research institute dedicated to understanding the causes and finding cures for neuropsychiatric and neurodegenerative disorders and addictions, including Alzheimer's disease. The strength of the patent protection for these discoveries is vital to Roskamp's ability to make these treatments available to those in need. Although it is a non-profit institution, The Roskamp Institute cannot do the extensive clinical work necessary to bring a drug to market all on its own. For the public to gain the benefit of treatments it discovers, the Institute needs significant outside investment or to partner with companies having the requisite resources. A strong patent portfolio is central to attracting such investors and corporate partners. The Roskamp Institute has 16 pending applications, several of which will be directly impacted by the retroactive limitations on the number of patent applications and patent claims available to inventors under the New Rules. The Roskamp Institute also hopes to file additional applications on the inventions resulting from its research efforts.

Tikvah is an Atlanta, Georgia biopharmaceutical company focused on the development of drug therapies for specific patient groups including totally blind individuals and various disorders and diseases such as spinal muscular atrophy. Tikvah relies on financing from outside investors to fund development of these products. This investment is driven by the expectations of investors in Tikvah's ability to obtain full and complete patent protection for its products.

Tikvah currently has 8 pending applications, several of which will be directly impacted by the retroactive limitation on continuation and RCE applications. Tikvah also hopes to file additional applications on its current and future drug technologies.

By their motion and brief, the *amici* seek to help inform the court of the harm that the New Rules would inflict on non-parties such as Hexas, The Roskamp Institute and Tikah which rely heavily on the promise of our patent system to attract the investment needed to develop valuable technologies for the public-at-large. The *amici* believe that the present submission will assist the Court in addressing the injunction motion, which currently is scheduled to be heard on Wednesday, October 31, 2007.

The brief is attached hereto. The *amici* ask the Court to deem it filed without the need for separate filing. The *amici* are 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 is untimely. The GSK TRO motion, however, was filed under two weeks ago so the *amici* respectfully submit that their motion is both important and timely under the circumstances.

For the reasons set forth herein, this Motion should be granted.

Dated: October 26, 2007

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Joint Motion and Memorandum in Support of Motion for Leave to File *Amici Curiae* Brief in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction and accompanying Order was electronically filed in Case No. 1:07cv1008 (JCC/TRJ) using the CM/ECF system and that service was thereby accomplished on this 26th day of October, 2007, upon the following counsel:

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I further certify that a copy of the foregoing was also served by facsimile and United States Postal Service first-class mail this 26th day of October, 2007, upon the following counsel:

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