

ORIGINAL

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUN 03 2009

No. 2008-1352

JAN HORBALY
CLERK

United States Court of Appeals
for the Federal Circuit

TRIANTAFYLLOS TAFAS,

Plaintiff-Appellant,

and

**SMITHKLINE BEECHAM CORPORATION (D/B/A GLAXOSMITHKLINE), SMITHKLINE
BEECHAM PLC, and GLAXO GROUP LIMITED (D/B/A GLAXOSMITHKLINE)**

Plaintiffs-Appellants,

v.

**JOHN J. DOLL, Acting Under Secretary of Commerce for Intellectual Property and
Acting Director of the United States Patent and Trademark Office, and
UNITED STATES PATENT AND TRADEMARK OFFICE,**

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Virginia in
Consolidated Case Nos. 1:07-CV-846 and 1:07-CV-1008, Senior Judge James C. Cacheris

PETITION FOR REHEARING *EN BANC* OF MARCH 20, 2009 DECISION

<p>John M. Desmarais Peter J. Armenio KIRKLAND & ELLIS LLP 153 East 53rd Street New York, N.Y. 10022 (212) 446-4800</p>	<p>F. Christopher Mizzo Jeffrey Bossert Clark D. Sean Trainor William Bestani KIRKLAND & ELLIS LLP 655 Fifteenth St., N.W. Washington, DC 20005 (202) 879-5000</p>	<p>Carter G. Phillips Virginia A. Seitz Jeffrey P. Kushan David L. Fitzgerald SIDLEY AUSTIN LLP 1501 K St., N.W. Washington, D.C. 20005 (202) 736-8000</p>	<p>Sherry M. Knowles Senior Vice President Chief Intellectual Property Counsel GLAXOSMITHKLINE 709 Swedeland Rd. King of Prussia, PA 19406 (610) 270-4800 <i>Attorneys for Plaintiffs- Appellants</i></p>
---	--	--	--

Date filed: June 3, 2009

U.S. FEDERAL CIRCUIT
2009 JUN -3 11:36
RECEIVED

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2009, I caused two true copies of the PETITION FOR REHEARING EN BANC OF THE MARCH 20, 2009 DECISION to be served on the following counsel of record via Federal Express:

Scott R. McIntosh
Joshua Waldman
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Room 7232
Washington, D.C. 20530
Counsel for All Defendants

Steven J. Moore
James Nealon
Kelley, Drye & Warren LLP
400 Atlantic Street
Stamford, CT 06901-3229
Counsel for Triantafyllos Tafas

David W. Ogden
Randolph D. Moss
Brian M. Boynton
Wilmer Cutler Pickering Hale & Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6000
*Counsel for Amicus:
Pharmaceutical Research and Manufacturers of America*

Randall Karl Miller
Arnold & Porter LLP
1600 Tysons Blvd.
Suite 900
McLean, VA 22102
(703) 720-7000
Email: randall_miller@aporter.com
*Counsel for Amicus:
Biotechnology Industry Organization*

Thomas J. O'Brien
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5186
Fax: (202) 739-3001
Email: to'brien@morganlewis.com
Counsel for Amicus:
American Intellectual Property Law Association

Blair Elizabeth Taylor
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-7566
(202) 662-5669
Fax: (202) 778-5669
Email: btaylor@cov.com
Counsel for Intellectual Property Owners Association

Scott Jeffrey Pivnick
Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Blvd.
Suite 1400
McLean, VA 22102
(703) 770-7864
Email: scott.pivnick@pillsburylaw.com
Counsel for Amicus:
Elan Pharmaceuticals, Inc.

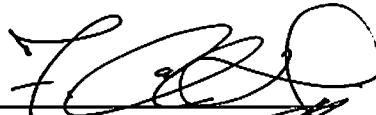
Charles Gorenstein
Birch Stewart Kolasch & Birch LLP
8110 Gatehouse Road
P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000
Email: cg@bskb.com
Counsel for Amicus:
William Mitchell College of Law
Intellectual Property Institute of William Mitchell College of Law

Kevin Michael Henry
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
Email: khenry@sidley.com
Counsel for Amicus:
Washington Legal Foundation

Matthew Christian Schruers
Computer & Communications Industry Association
900 17th Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 783-0070
Fax: (202) 783-0534
Email: MSchruers@ccianet.org
Counsel for Amicus:
Public Patent Foundation
Computer and Communications Industry Association
AARP
Consumer Federation of America
Essential Action
Foundation for Taxpayer and Consumer Rights
Initiative for Medicines, Access and Knowledge
Knowledge Ecology International
Prescription Access Litigation
Public Knowledge
Research on Innovation
Software Freedom Law Center

Jennifer Sue Martinez
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
(650) 725-2749
Counsel for Amicus:
Intellectual Property and Administrative Law and Public Health Professors

Robert Christian Bertin
Swidler Berlin LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116
(202) 373-6672
Email: r.bertin@bingham.com
Counsel for Amicus:
Bar Association of the District of Columbia



F. Christopher Mizze

Attorney for Plaintiffs-Appellees
SmithKline Beecham Corporation d/b/a
GlaxoSmithKline, SmithKline Beecham
plc, and Glaxo Group Limited d/b/a
GlaxoSmithKline