

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2008-1352

TRANTAFYLLOS TAFAS,

Plaintiff-Appellee,

and

SMITHKLINE BEECHAM CORPORATION (doing business as GlaxoSmithKline),
SMITHKLINE BEECHAM PLC, and
GLAXO GROUP LIMITED (doing business as GlaxoSmithKline),

Plaintiffs-Appellees,

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-Appellants.

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.

Before MICHEL, Chief Judge, NEWMAN, MAYER, RADER, SCHALL, BRYSON, GAJARSA, LINN, DYK, PROST, and MOORE, Circuit Judges.*

PER CURIAM.

ORDER

A combined petition for panel rehearing and rehearing en banc was filed by the Appellees, and a response thereto was invited by the court and filed by the Appellants.

The court granted motions for leave to file briefs as amici curiae.

* Judge Lourie did not participate in the poll.

The petition for rehearing was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc, response, and the amici curiae briefs were referred to the circuit judges who are authorized to request a poll whether to rehear the appeal en banc. A poll was requested, taken, and the court has decided that the appeal is appropriate for en banc consideration.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The petition for rehearing en banc is granted.
- (2) The court's March 20, 2009 opinion, Tafas v. Doll, 559 F.3d 1345, is vacated and the appeal is reinstated.
- (3) This appeal will be heard en banc on the basis of the briefs already on file and additional briefs discussing the issues addressed in the panel opinions. An original and thirty copies of all briefs shall be filed, and two copies served on opposing counsel. The parties shall file thirty copies of the original briefs within thirty days from the date of filing of this order. The Appellants shall file their additional brief within thirty days from the date of filing of this order. The Appellees' additional briefs are due within twenty days from the date of service of the Appellants' brief. The Appellants' additional reply brief, if any, is due within seven days from the date of service of the second Appellees' brief. Appellants shall file thirty copies of the joint appendix within seven days of filing their reply briefs. Additional briefs shall contain no more than 7,000 words and any additional reply brief no more than 3,500 words, and shall otherwise

adhere to the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

- (4) Briefs of amici curiae will be entertained in accordance with Federal Rules of Appellate Procedure 29 and Federal Circuit Rule 29.
- (5) Scheduling of oral argument will be resolved at a later date.

FOR THE COURT

July 6, 2009

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Steven J. Moore, Esq.
John M. Desmarais, Esq.
James A. Toupin, Esq.