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If you have any questions about this alert or would like to discuss this topic further, please contact your Foley attorney or any of the following individuals:

Courtenay C. Brinckerhoff

Washington, D.C.
202.295.4094
cbrinckerhoff@foley.com

Sharon R. Barner

Chicago, IL
312.832.4569
sbarner@foley.com

Glenn Law

Washington, D.C.
202.672.5426
glaw@foley.com

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Court Blocks USPTO Claims and Continuations Rules

Today in *Smithkline Beecham Corp. v. Dudas*, Civ. Action No. 1:07cv1008 (E.D. Va.), Senior Judge Cacheris issued a preliminary injunction blocking the United States Patent and Trademark Office's (USPTO) Claims and Continuations Rules from taking effect on November 1, 2007 (tomorrow). This appears to give patent applicants a reprieve from the rules until the court decides their validity.

GSK has challenged the rules on many grounds, including that the rules are (1) beyond the USPTO's limited rulemaking authority, (2) contrary to 35 U.S.C. SS 120, (3) having retroactive effect, (4) vague, and (5) arbitrary and capricious. The briefing schedule for the trial has not been finalized, but the trial is not expected to begin until at least mid-December.

While the legal landscape surrounding the USPTO rules is uncertain, Foley & Lardner LLP will continue to monitor the situation and advise clients on developing effective strategies on a case-by-case basis.

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