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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91193335
Party	Plaintiff Embarcadero Technologies, Inc.
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Attachments	RSTUDIO-91193335-Embarcadero Pretrial Disclosures-Final.pdf (4 pages) (55564 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EMBARCADERO TECHNOLOGIES, INC.

Opposer

v.

RSTUDIO, INC.

Applicant.

Opposition No.: 91-193,335

Trademarks: RSTUDIO

Serial Nos.: 77/691,980

77/691,984

77/691,987

OPPOSER'S PRETRIAL DISCLOSURES

Pursuant to *Fed. R. Civ. Proc. 26(a)(3)*, and *Trademark Rules of Practice Rule 2.121(e)*, Opposer, EMBARCADERO TECHNOLOGIES, INC., (“Embarcadero”, or “Opposer”), hereby makes the following pretrial disclosures:

I. Witnesses

In accordance with *Fed. R. Civ. Proc. 26(a)(3)*, and *Trademark Rules of Practice Rule 2.121(e)*, Embarcadero presents that the following persons identified below are expected to testify or may be called to testify in Opposer’s 30-Day Trial Period. Each person’s anticipated subjects of testimony and related expected documents are identified in the following sections.

1. Jason Tiret
Product Manager
Embarcadero Technologies, Inc.
100 California Street, 12th Floor
San Francisco, CA 94111
Tel: (415) 834-3131

Expected Subjects of Testimony: Information on the U.S. trademark registrations and trademark rights owned and relied upon by Opposer, knowledge of the products and services of Opposer, knowledge of the marketing, advertising and sales activities of Opposer, history and background of the ER/STUDIO products, Embarcadero’s ownership and use of the ER/STUDIO mark (including goods and services advertised, promoted, distributed, offered and/or sold in the U.S. under or in connection with the ER/STUDIO mark), consumer recognition of Embarcadero’s ER/STUDIO mark, consumer use and implementation of the various ER/STUDIO products and services into their environments, the likely impact on business and damages caused by Applicant’s

use and registration of Applicant's RSTUDIO marks, the close relationship between the ER/STUDIO software and other types of software.

2. Jim Brodrick
Director of Software Development
Embarcadero Technologies, Inc.
100 California Street, 12th Floor
San Francisco, CA 94111
Tel: 415.834.3131

Expected Subjects of Testimony: Information on the U.S. trademark registrations and trademark rights owned and relied upon by Opposer, knowledge of the products and services of Opposer, knowledge of the marketing, advertising and sales activities of Opposer, history and background of the ER/STUDIO products, Embarcadero's ownership and use of the ER/STUDIO mark (including goods and services advertised, promoted, distributed, offered and/or sold in the U.S. under or in connection with the ER/STUDIO mark), consumer recognition of Embarcadero's ER/STUDIO mark, consumer use and implementation of the various ER/STUDIO products and services into their environments, the likely impact on business and damages caused by Applicant's use and registration of Applicant's RSTUDIO marks, the close relationship between the ER/STUDIO software and other types of software.

II. Documents expected to be Introduced during Testimony

The following list identifies the types of documents and things, which are expected to be introduced or may be introduced as exhibits during the testimony of the witnesses:

1. U.S. Trademark Registrations, including PTO file wrappers, relied upon in this opposition;
2. Documents concerning the use of the ER/STUDIO mark on a variety of products including computer software and related services;
3. Current and archival webpages from Embarcadero's websites and/or 3rd parties websites showing the background, history and use of the ER/STUDIO mark on a variety of products;
4. Documents containing information on the current and past sales, advertising and marketing information for the various ER/STUDIO products and services;
5. Documents containing datasheets detailing product features, information and benefits of the ER/STUDIO product line;

6. Documents containing analyst and research reports covering the various ER/STUDIO products and services, which also contain information on market share, consumer recognition and competition;
7. Documents containing case studies on how companies have been implementing the various ER/STUDIO products and services into their environments and benefits gained;
8. Documents showing the close relationship between ER/STUDIO software and other types of software;
9. Documents provided by Applicant during the discovery process relating to the RSTUDIO product and intended usage;
10. Documents relating to third-party products using the R language.

Counsel for Embarcadero certify that, to the best of counsel's knowledge, information and belief, formed after preparation that is reasonable under the circumstances, this disclosure is complete and correct as of the date indicated below. However, counsel reserves the right to supplement or amend this disclosure if necessary, as additional information becomes available.

Dated: January 14, 2011

Respectfully Submitted,

EMBARCADERO TECHNOLOGIES, INC.

By /Martin R. Greenstein/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S PRETRIAL DISCLOSURES** is being served on January 14, 2011, by first class mail, postage prepaid on Applicant's Attorney of Record at his address below, with a courtesy copy sent by e-mail to: CEW@foleyhoag.com, JHuston@foleyhoag.com, ARufo@foleyhoag.com:

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