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

Applera Corporation,	)	Opposition No.: _____
	)	Mark: CELERA
Opposer,	)	Serial No.: 76383219
	)	Filed: March 12, 2002
vs.	)	Published: April 15, 2003
	)	
RedtagBiz, Inc.,	)	
	)	
Applicant.	)	
	)	

09-02-2003
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

NOTICE OF OPPOSITION
BASED ON DILUTION

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same and alleges that:

1. The Opposer is a corporation organized and existing under the State of Delaware, with a business address at 43 West Gude Drive, Rockville, MD 20850;

2. The Opposer is the owner of various applications and registration for the mark CELERA:

> Registration No. 2750646 for synthetic materials for scientific or medical research use, namely, synthetic DNA, human, plant and animal tissue and proteins; biological materials for scientific or medical research use, namely, human plant, and animal tissues, cells and natural DNA; reagents for scientific or medical research use, in International Class 1, filed on August 5, 1998;
>
> Serial No. 75531484 for CD ROMS, compact discs, audio and video cassette tapes featuring the subject of science, technology, medicine, health and health-related business, law and public policy issues; downloadable electronic publications in the nature of reports in the field of

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science, technology, medicine, health and health-related business, law and public policy issues in International Class 9; printed reports featuring the subjects of science, technology, medicine, health and health-related business, law and public policy issues, in International Class 16, filed on August 5, 1998;

Serial No. 75531485 for licensing of assay systems for the performance of medical, research and laboratory diagnostic services in the fields of science, technology, medicine, health and computerized informational databases; business consultation in International Class 35; Consultation and research in the fields of science, technology, medicine and health and public policy; computer services, namely, providing databases and information in the fields of science, technology, medicine, health and public policy; providing temporary use of on-line non-downloadable software for accessing and analyzing information in the fields of science, technology, medicine, health and public policy; medical, research and laboratory diagnostic services and assaying in the fields of medicine and health; licensing of intellectual property for the performance of medical, research and laboratory diagnostic services in the fields of medicine and health; development of new products for others in the fields of science, technology, medicine and health, in International Class 42, filed on August 5, 1998;

Serial No. 75531482 for computer software and computer software development tools for analysis and database management of genomic, proteomic and disease information in the fields of science, technology, medicine, health and their related business law and public policy areas; computer software and computer software development tools for analysis and management of databases on the subjects of genomes, proteomes and disease; multimedia software prerecorded on CD ROM featuring genomic, proteomic and disease information; Interactive software and computer programs for the analysis and database management of genomic, proteomic and disease information in the fields of science, technology, medicine, health, and their related business, law and public policy areas; compact discs, pre-recorded audio and video tape cassettes on the subject of genomes, proteomes and diseases in the field of science, technology, medicine, health and their related business, law and public policy areas, in International Class 9, filed on August 5, 1998;

Serial No. 76247740 for instruments and integrated systems for medical and diagnostic use; nucleic acid sequencers and synthesizers; genetic analyzers; electrophoresis machines; thermal cycler; cytometer; chemical reaction mixture containment apparatus and parts thereof; protein and peptide synthesizers; mass spectrometer and chromatograph; high-throughput instrument for preparation of nucleic acid samples; laboratory

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robots; and accessories to and parts of the above instruments, in International Class 10, filed on April 26, 2001;

Serial No. 76247733 for diagnostic reagents and kits comprised of reagents for scientific or research use, in International Class 1; Diagnostic reagents and kits comprised of diagnostic reagents for clinical or medical laboratory use; Medical diagnostic reagents and kits comprised of medical diagnostics reagents; Clinical medical reagents and kits comprised of clinical medical reagents, in International Class 5, filed on April 26, 2001;

Serial No. 76247743 for laboratory equipments and supplies; nucleic acid sequencers and synthesizers; genetic analyzers; electrophoresis machines; thermal cycler; cytometer; chemical reaction mixture containment apparatus and parts thereof; protein and peptide synthesizers; mass spectrometer and chromatograph; high-throughput instrument for preparation of nucleic acid samples; laboratory robots; and accessories to and parts of the above instruments; plastic consumables; rack; vials; caps; septa; needles; bottles; flask; filter; tubes; and seals; plastic tray cover; micro plate; pipette tips; reagent reservoir, optical heat field covers; plastic cards; and capillary arrays, in International Class 9, filed on April 26, 2001;

3. The Opposer is also the owner of various applications for CELERA and design:

Serial No. 76118455 for computer software and computer software development tools for analysis and management of genomic, proteomic and disease data and information in the fields of science, technology, medicine, health and their related business, law and public policy areas; computer software and computer software development tools for analysis and management of databases in the subjects of genomes, proteomes and diseases; cd-roms featuring genomic, proteomic and disease data and information; interactive software and computer programs for the analysis and management of genomic, proteomic and disease data and information in the fields of science, technology, medicine, health and their related business, law and public policy area; compact discs, pre-recorded audio and video tapes and cassettes on the subjects of genomes, proteomes and diseases in the fields of science, technology, medicine, health and their related business, law and public policy areas, in International Class 9, filed August 29, 2000;

Serial No. 76118475 for downloadable electronic publications in the nature of reports in the field of science, technology, medicine, health and health-related business, law and public policy issues, in International Class 9; printed publications, namely reports featuring the subjects of science, technology, medicine, health and health-related business, law and public policy issues, in International Class 16, filed on August 29, 2000;

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Serial No. 76118476 for licensing of assay systems for performance of medical, research and laboratory diagnostic services in the fields of science, technology, medicine, health and computerized information databases; business consultation in International Class 35; Consultation and research in the fields of science, technology, medicine, health and public policy; computer services, namely, providing databases and information in the fields of science, technology, medicine, health and public policy; providing temporary use of on-line non-downloadable software for accessing and analyzing information in the fields of science, technology, medicine, health, and public policy; medical research and laboratory diagnostic services and assaying the fields of medicine and health; licensing of intellectual property for the performance of medical, research and laboratory diagnostic services in the fields of medicine and health; development of new products for others in the fields of science, technology, medicine and health, in International Class 42, filed on August 29, 2000;

Serial No. 76118477 for synthetic materials for scientific or medical research use, namely synthetic DNA, human, plant and animal tissue and proteins; biological materials for scientific or medical research use, namely human, plant, and animal tissues, cells and natural DNA; reagents for scientific or medical research use, in International Class 1, filed on August 29, 2000;

Serial No. 78067988 for calculators, in International Class 9; Watches, in International Class 14; pens, in International Class 16; all purpose sport bags; duffel bags; tote bags; and leather key chains, in International Class 18; Mugs; squeeze bottle sold empty, in International Class 21; and Clothing, namely, bandanas, beachwear, jackets, belts, blazers, bloomers, blouses, bonnets, bow and neck ties, capes, caps, cardigans, wrap-arounds, coats, collars, coveralls, coverups, dusters, shorts, shirts, vests, in International Class 25, filed on June 7, 2001;

4. The Applicant is a corporation organized and existing under the State of Minnesota, with a business address at 7585 Equitable Drive, Eden Prairie, MN 55344;

5. The Applicant is the owner of the trademark application Serial No. 76383219 for the mark CELERA for:

Audio Cassette Recorders; Audio Tape Recorders; Camcorders; CD Players; Compact Disc Players; Digital Audio Tape Players; Digital Audio Tape Recorders; Digital Cameras; Digital Phones; Digital Video Disc Drives; Digital Video Recorders; DVD Machines; Electric Audio

Playback Units with Lights and Speakers; Electronic Personal Organizer; Headphones; Home Theater Products, Namely, LCD and DLP; Personal Stereos; Radios; Radios Incorporating Clocks; Audio Receivers; Video Receivers; Remote Controls for Radios and Stereos; Stereo Amplifiers; Stereo Receivers; Stereo Tuners; Sub-Woofers; Television Sets; VCD Machines; Video Cameras; Video Cassette Recorders; Video Monitors; Video Screens; Video Tape Recorders, filed on March 12, 2002;

6. The Opposer believes that, if the Applicant is permitted to register the mark CELERA, the Opposer's right to enjoy the exclusive use of its mark CELERA in connection with its goods and services will be harmed and will be damaged by the registration of the mark shown in the above-identified application;

7. The Opposer alleges that the Applicant's CELERA mark will dilute or dilutes the Opposer's CELERA mark;

8. The Opposer's CELERA mark is identical to Applicant's CELERA mark.

9. The Opposer has spent considerable effort and resources in promoting its CELERA mark and the Opposer's CELERA mark has been advertised extensively in a variety of publications since it adopted the mark in 1998;

10. The Opposer believes that the Applicant's CELERA mark is used in commerce or intended to be used in commerce;

11. The Opposer's CELERA mark is famous;

12. The Opposer's CELERA mark has become famous prior to the filing date of the Applicant's application to register the CELERA mark or has become famous prior to the Applicant's use of the mark;

13. The Opposer's CELERA mark has been used extensively since it adopted the mark in 1998;

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14. The Opposer's CELERA products and services are sold throughout a substantial portion of the United States;

15. In 2000, Celera, a business division of the Opposer, completed the mapping of the entire human genome;

16. The CELERA mark has been the subject and feature of intense media attention by national U.S. publications, including cover stories in *Time*, *Business Week*, and *Forbes* magazines, as well as by numerous other publications and scientific journals;

17. There have been literally thousands of articles concerning the Opposer's CELERA mark, both before and after a team of Celera scientists were the first to decode the human genome, "the historical feat that changes medicine forever," according to *Time Magazine* on its cover;

18. When the Opposer adopted the CELERA mark in 1998, the CELERA mark was distinctive and unique;

19. The CELERA mark remains distinctive and unique and since then has generated valuable recognition and goodwill;

20. Customers are likely to associate the Applicant's CELERA products and the Opposer's CELERA products with the Opposer's CELERA mark, even if the customers are not confused as to the different origins of the products;

21. The Opposer is the owner of all pending applications and registration for the CELERA mark on the United States Patent and Trademark Office register, except for the Applicant's CELERA trademark applications.

22. The Opposer has actively enforced its superior trademark rights against third parties.

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POWER OF ATTORNEY

Opposer appoints R.J. Heher and all attorneys of Fenwick & West, 801 California Street, Mountain View, CA 94041 to represent Opposer in this proceeding, with full power of substitution and revocation, and to transact all business in the United States Patent and Trademark Office in connection therewith.

WHEREFORE, in view of the above, the Opposer petitions the Board to refuse registration of the above-cited application and for other appropriate relief.

Please charge the $300.00 petition fee under fee code 6402 to Deposit Account No. 501084. This Notice of Opposition is submitted in duplicate.

Respectfully submitted,

Dated: August 27, 2003

Jorge C. Barreno, Esq.
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CERTIFICATE OF MAILING 37 C.F.R. § 1.08

I hereby certify that this paper or fee is being deposited with the United States Postal Service with sufficient postage as First Class Mail under 37 C.F.R. § 1.08 on August 27, 2003 and is addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Alison Choppelas