

ESTTA Tracking number: **ESTTA589543**

Filing date: **02/26/2014**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Altera Corporation
Granted to Date of previous extension	02/26/2014
Address	101 Innovation Drive San Jose, CA 95134 UNITED STATES

Attorney information	Rochelle D. Alpert Morgan, Lewis & Bockius, LLP One Market, Spear Street Tower San Francisco, CA 94105 UNITED STATES ralpert@morganlewis.com, shall@morganlewis.com, sfrademarks@morganlewis.com Phone:415.442.1326
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Applicant Information

Application No	86046359	Publication date	10/29/2013
Opposition Filing Date	02/26/2014	Opposition Period Ends	02/26/2014
Applicant	nPulse Technologies, Inc. 375 Four Leaf Lane, Suite 201 Charlottesville, VA 22903 GERMANY		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer software and hardware for network auditing and security monitoring, traffic analysis and reporting, usage, accounting and billing, fault isolation, event correlation, network performance and capacity planning, discovery and configuration management, compliance assurance, policy enforcement, forensic analysis and trending, application performance monitoring, service verification and analytic, and post-event troubleshooting and analysis
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3014789	Application Date	06/25/2002
Registration Date	11/15/2005	Foreign Priority	NONE

		Date	
Word Mark	CYCLONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2002/09/23 First Use In Commerce: 2002/12/00 Semiconductors, integrated circuits, programmable logic devices, and microprocessors		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CYCLONE		
Goods/Services	As specified in the attached NOTICE OF OPPOSITION.		

Attachments	Notice of Opposition (Exh. A) -- Serial # 86046359.pdf(408417 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/RDA/
Name	Rochelle D. Alpert
Date	02/26/2014

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

In the matter of application Serial No. 86/046,359
Filed August 23, 2013
For the mark **CYCLONE**
Published in the OFFICIAL GAZETTE on October 29, 2013

ALTERA CORPORATION,

Opposer,

v.

NPULSE TECHNOLOGIES, INC.

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Altera Corporation, a Delaware corporation, having its principal place of business at 101 Innovation Drive, San Jose, California 95134 (“Altera”), believes that it will be damaged by the registration of the designation shown in Serial No. 86/046,359 filed by nPulse Technologies, Inc., a Delaware corporation having its principle place of business at 375 Four Leaf Lane, Suite 201, Charlottesville, Virginia 22903 (“Applicant”), and hereby opposes same.

As grounds for the opposition, Altera alleges as follows:

1. Altera promotes, offers and sells semiconductors, programmable logic devices, microprocessors and software used for a wide array of purposes, including but not limited to use in connection with wireless communications devices, computers, computer storage; computer network performance, medical devices, and automotive devices, and

promotes, offers and sells services related to its products including technical support services, and education and training services.

2. For over a decade Altera has owned and used, in interstate commerce, the mark CYCLONE[®] for “semiconductors, integrated circuits, programmable logic devices and microprocessors” not limited to any industry or field. Its CYCLONE[®] products can be used for a wide array of purposes.

3. On Altera’s website, www.altera.com, Altera features the CYCLONE[®] mark and products sold under the CYCLONE[®] mark.

4. Altera owns a valid, subsisting, uncancelled and unrevoked, incontestable federal trademark registrations for its CYCLONE[®] mark, United States Registration No. 3,014,789, for “Semiconductors, integrated circuits, programmable logic devices, and microprocessors” in International Class 9 (“CYCLONE[®] Mark”). The CYCLONE[®] mark registered on November 15, 2005. A true and correct copy of Altera’s federal registration from the Trademark Office’s TSDR database, including the Assignment Status, for the CYCLONE[®] Mark is attached hereto as Exhibit A.

5. Through substantial investment of time and effort, Altera has built extensive good will and recognition for its CYCLONE[®] mark and products. As a result of Altera’s exclusive, long-standing, continuous and widespread use and promotion of its CYCLONE[®] mark and products, the CYCLONE[®] mark has become associated exclusively with Altera and its quality CYCLONE[®] products in the relevant marketplaces.

6. By way of the opposed intent-to-use application (App. Ser. No. 86/046,359) (“Application”), Applicant seeks to register the designation CYCLONE for “Computer software and hardware for network auditing and security monitoring, traffic analysis

and reporting, usage, accounting and billing, fault isolation, event correlation, network performance and capacity planning, discovery and configuration management, compliance assurance, policy enforcement, forensic analysis and trending, application performance monitoring, service verification and analytic, and post-event troubleshooting and analysis” in International Class 9.

7. The opposed intent-to-use application was filed on August 23, 2013, well after Altera filed and obtained a United States trademark registration for its CYCLONE[®] mark, well after Altera first commenced use of its CYCLONE[®] mark and well after the registration for the Altera CYCLONE[®] mark became incontestable.

**FIRST GROUND FOR OPPOSITION
(Likelihood of Confusion)**

8. Altera realleges the allegations contained in paragraphs 1 through 7 of this Notice of Opposition as if fully set out herein.

9. The designation for which Applicant seeks registration – CYCLONE – is identical in sight, sound and meaning, as well as commercial impression, to the CYCLONE[®] Mark owned and used by Altera.

10. On information and belief, Altera alleges that the goods for which Applicant seeks to register the opposed CYCLONE designation are overlapping with, related to and/or complementary to, Altera’s products offered under its CYCLONE[®] mark. Moreover, on information and belief, Altera alleges that Applicant intends to direct its products under the applied-for CYCLONE designation to the same and/or overlapping consumers to whom Altera promotes and offers its products bearing its CYCLONE[®] mark. Further, on information and

belief, Altera alleges that Applicant and Altera use or will use the same or overlapping channels of trade to target the same or overlapping prospective customers.

11. Under these circumstances, Applicant's CYCLONE products are likely to be confused with Altera and its products based on Altera's prior rights in and exclusive use of the CYCLONE[®] Mark in relevant marketplaces. Accordingly, Altera will be damaged if Applicant's CYCLONE designation as set forth in the opposed Application proceeds to registration.

12. Inasmuch as Altera's CYCLONE[®] mark is identical in sight, sound and/or meaning to the applied-for designation and because the goods identified in the opposed application and the apparent channels of trade for those goods overlap with those of Altera, Applicant's application for the CYCLONE designation is likely to cause confusion or to cause mistake, or to deceive or disparage by falsely suggesting a connection with Altera and its CYCLONE[®] products, when no such connection exists. As a result, Altera will be damaged by the registration of the designation sought to be protected in Applicant's intent-to-use application and requests that the opposed application be denied.

13. Altera believes it will be damaged by registration of the applied-for designation in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Unless Applicant's application is denied, Applicant will unjustifiably reap the benefits of the goodwill of Altera, and Altera will suffer irreparable damage and injury as a result of the confusion and mistake and false association that is likely to arise from the registration of the applied-for CYCLONE designation.

WHEREFORE, Altera requests that application Serial No. 86/046,359 be rejected, that no registration be issued thereon to Applicant, that this opposition be sustained in favor of Altera, and that such other appropriate and proper relief be entered.

Dated: February 26, 2014

Respectfully submitted,

By: /s/ RDA
Rochelle D. Alpert
Attorney for Opposer Altera Corporation

Rochelle D. Alpert
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EXHIBIT A
to Notice of Opposition (Serial No. 86046359)

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,014,789

United States Patent and Trademark Office

Registered Nov. 15, 2005

**TRADEMARK
PRINCIPAL REGISTER**

CYCLONE

ALTERA CORPORATION (DELAWARE COR-
PORATION)
101 INNOVATION DRIVE
SAN JOSE, CA 95134

FIRST USE 9-23-2002; IN COMMERCE 12-0-2002.

SER. NO. 78-138,575, FILED 6-25-2002.

FOR: SEMICONDUCTORS, INTEGRATED CIR-
CUITS, PROGRAMMABLE LOGIC DEVICES, AND
MICROPROCESSORS, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).

AMY HELLA, EXAMINING ATTORNEY

STATUS

DOCUMENTS

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Mark: CYCLONE

No Image exists for this case.

US Serial Number: 78138575

Application Filing Date: Jun. 25, 2005

US Registration Number: 3014789

Registration Date: Nov. 15, 2005

Register: Principal

Mark Type: Trademark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Dec. 04, 2010

Publication Date: Aug. 23, 2005

Mark Information

Mark Literal Elements: CYCLONE

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Related Properties Information

International Registration [1052615](#)
Number:

International Application [A0021367/1052615](#)
(s) /Registration(s) Based
on this Property:

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Semiconductors, integrated circuits, programmable logic devices, and microprocessors

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023,

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 23, 2002

Use in Commerce: Dec. 2002

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes
Filed ITU: Yes	Currently ITU: No
Filed 44D: No	Currently 44D: No
Filed 44E: No	Currently 44E: No
Filed 66A: No	Currently 66A: No
Filed No Basis: No	Currently No Basis: No

Current Owner(s) Information

Owner Name: Altera Corporation
Owner Address: 101 Innovation Drive
 San Jose, CALIFORNIA 95134
 UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Rochelle D. Alpert
Attorney Primary Email Address: ralpert@morganlewis.com
Docket Number: 023068.25
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Rochelle D. Alpert
 MORGAN, LEWIS & BOCKIUS LLP
 ONE MARKET, SPEAR STREET TOWER
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 UNITED STATES
Phone: 415-442-1326
Fax: 415-442-1
Correspondent e-mail: ralpert@morganlewis.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
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Dec. 04, 2010	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68973
Dec. 04, 2010	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68973
Nov. 17, 2010	TEAS SECTION 8 & 15 RECEIVED	
Nov. 15, 2005	REGISTERED-PRINCIPAL REGISTER	
Aug. 23, 2005	PUBLISHED FOR OPPOSITION	
Aug. 03, 2005	NOTICE OF PUBLICATION	
May 04, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	72589
Apr. 29, 2005	ASSIGNED TO LIE	72589
Apr. 22, 2005	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 28, 2005	LIE CHECKED SUSP - TO ATTY FOR ACTION	76532
Sep. 15, 2004	LETTER OF SUSPENSION E-MAILED	6332
Sep. 15, 2004	SUSPENSION LETTER WRITTEN	76520
Sep. 13, 2004	TEAS/EMAIL CORRESPONDENCE ENTERED	72589
Sep. 02, 2004	CORRESPONDENCE RECEIVED IN LAW OFFICE	72589
Sep. 02, 2004	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jul. 06, 2004	FINAL REFUSAL E-MAILED	
Jun. 04, 2004	CORRESPONDENCE RECEIVED IN LAW OFFICE	72589
Jun. 04, 2004	PAPER RECEIVED	
Dec. 01, 2003	NON-FINAL ACTION E-MAILED	
Nov. 14, 2003	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Nov. 06, 2003	CASE FILE IN TICRS	
Oct. 21, 2003	USE AMENDMENT ACCEPTED	
Oct. 16, 2003	AMENDMENT TO USE PROCESSING COMPLETE	
May 19, 2003	USE AMENDMENT FILED	
May 19, 2003	CORRESPONDENCE RECEIVED IN LAW OFFICE	
May 19, 2003	PAPER RECEIVED	
May 06, 2003	TEAS CHANGE OF CORRESPONDENCE RECEIVED	

Nov. 15, 2002	NON-FINAL ACTION E-MAILED	
Nov. 07, 2002	ASSIGNED TO EXAMINER	76520

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 110

Date in Location: Dec. 04, 2

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load



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Assignments on the Web > [Trademark Query](#)

No assignment has been recorded at the USPTO

For Serial Number: 78138575

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.3.4
Web interface last modified: Jul 8, 2013 v.2.3.4

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CERTIFICATE OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is One Market, Spear Street Tower, **San Francisco**, CA 94105.

On **February 26, 2014**, I served the within documents:

NOTICE OF OPPOSITION and Exhibit A (Application Serial No. 86/046,359)



(BY MAIL) by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at **San Francisco**, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.




(BY FEDERAL EXPRESS) I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and delivery to the party/ies listed below:

Thomas F. Bergert
WILLIAMS MULLEN
321 E. Main Street, Suite 400
Charlottesville, Virginia 22902-3201

Attorney for Applicant, nPulse Technologies, Inc..

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on **February 26, 2014**, at **San Francisco**, California.



Yelena Lolua