

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Defendant.

)
) No. C-03-1316 PJH
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FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT
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1 Plaintiff Genetic Technologies Limited, through its attorneys Faegre &
2 Benson LLP, submits this First Amended Complaint in this action for patent
3 infringement, and for its complaint against Defendant Applera Corporation, states
4 as follows:
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6 7 **PARTIES**

8 1. Plaintiff Genetic Technologies Limited (“GTG”) is an Australian
9 corporation, with its principal place of business in Victoria, Australia.
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11 2. Defendant Applera Corporation (“Applera”) is a Delaware
12 corporation, with its principal place of business in Norwalk, Connecticut. Applera
13 conducts business through two operating divisions: Applied Biosystems Group
14 (“Applied Biosystems”) and Celera Genomics Group (“Celera Genomics”), and
15 through Celera Diagnostics, a joint venture between Applied Biosystems and
16 Celera Genomics.
17

18 3. Defendant Applera is registered to do business and is doing business
19 in the state of California. Applied Biosystems is headquartered in Foster City,
20 California and Celera Diagnostics is headquartered in Alameda, California.
21 Applera’s registered agent, Corporation Services Company/CSC-Lawyers
22 Incorporating Service, is located in Sacramento, California.
23

24 **JURISDICTION and VENUE**

25 4. The Court has subject matter jurisdiction over this case pursuant to
26 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) because this case presents a well-
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1 pleaded federal question under the Patent Act of 1952 (as amended), 35 U.S.C.
2 §§ 1, et seq.

3 5. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b)
4 because Applera is registered to do business in the state of California, has a regular
5 and established place of business in the Northern District of California, and upon
6 information and belief has committed acts of infringement in the Northern District
7 of California. Venue also is proper in this district pursuant to 28 U.S.C. § 1391 (c)
8 because Applera is a corporation subject to personal jurisdiction within the
9 Northern District of California.
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12 GENERAL ALLEGATIONS

13 6. GTG is an Australian-based company involved in a number of
14 biotechnology ventures. In particular, GTG is a technology leader in the field of
15 genomic research relating to non-coding DNA and applications thereof.
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17 GTG's '179 and '762 Patents

18 7. On March 18, 1997, the United States Patent and Trademark Office
19 issued U.S. Patent No. 5,621,179 for an "Intron Sequence Analysis Method For
20 Detection of Adjacent and Remote Locus Alleles as Haplotypes" (the "'179
21 Patent"). A true and correct copy of the '179 Patent is attached as Exhibit A and
22 incorporated herein.
23

24 8. The '179 Patent is generally directed to a method for detecting at
25 least one allele of a genetic locus. The method of the '179 Patent allows *inter alia*
26 direct determination of the haplotype. According to Claim 1 of the '179 Patent, the
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1 method comprises amplifying genomic DNA with a primer pair that spans a non-
2 coding region sequence and defines a DNA sequence in genetic linkage with the
3 genetic locus. The primer-defined DNA sequence contains a sufficient number of
4 non-coding region sequence nucleotides to produce an amplified DNA sequence
5 characteristic of the allele. The amplified DNA sequence is analyzed to detect the
6 allele.
7

8 9. GTG is the assignee for the '179 Patent, and it owns valid and
9 enforceable rights, title and interest in the '179 Patent.
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11 10. On December 22, 1998, the United States Patent and Trademark
12 Office issued U.S. Patent No. 5,851,762 for a "Genomic Mapping Method by
13 Direct Haplotyping Using Intron Sequence Analysis" (the "'762 Patent"). A true
14 and correct copy of the '762 Patent is attached as Exhibit B and incorporated
15 herein.
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17 11. The '762 Patent is generally directed to a method for mapping
18 genes. The method of the '762 Patent allows *inter alia* identification of a
19 chromosomal region that is associated with a particular trait. The method
20 generally involves analysis of the genomic DNA of a group of individuals to
21 generate haplotype, such as allelic or sub-allelic, information associated with
22 chromosomal regions. This information can then be used to identify the location
23 of a chromosomal region associated with a particular trait. Claim 9 of the '762
24 Patent describes a method for genomic mapping to identify a chromosomal region
25 associated with a trait comprising of obtaining genomic DNA samples from a
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1 plurality of individuals with the trait, where the individuals are not derived from a
2 single family. A plurality of non-coding sequences from a series of polymorphic
3 chromosomal regions from the genomic DNA samples is amplified and analyzed
4 to identify the haplotype of each chromosomal region. The degree of restriction in
5 haplotype heterogeneity is determined at each chromosomal region for the trait-
6 exhibiting individuals and is compared with the degree of haplotype heterogeneity
7 in the general population. A subseries of adjacent chromosomal regions having a
8 greater degree of heterogeneity restriction at the central region of the subseries
9 than at the ends of the subseries is an indication that the central region is associated
10 with the trait.
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12
13 12. GTG is the assignee for the '762 Patent, and it owns valid and
14 enforceable rights, title and interest in the '762 Patent.

15 **Applera And Its Infringing Activities**

16
17 13. Upon information and belief, Applera is a life sciences company that
18 carries out its operations through its operating divisions --Applied Biosystems and
19 Celera Genomic, and through Celera Diagnostics, a joint venture between Applied
20 Biosystems and Celera Genomics.

21 14. Upon information and belief, Applied Biosystems, Celera
22 Genomics, and Celera Diagnostics are co-participants in the Applera Genome
23 Initiative ("Initiative"), a joint project with its objective to generate data for target
24 validation, predictive toxicology, drug efficacy, diagnostics and assay products.
25 Specific projects within the Initiative include the identification and selection of
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1 approximately 200,000 single nucleotide polymorphisms (“SNPs”) located in
2 genes or gene-regulatory regions and the validation on approximately 90 sets of
3 human DNA by generating individual genotypes and allele frequency data.
4 Another project within the Initiative, the Applera Genome Project, is designed to
5 re-sequence the genes and regulatory regions of about 40 individuals in order to
6 validate genomic sequence and identify SNPs for incorporation into disease
7 association studies. The studies compare genotypes and gene expression profiles
8 from healthy and diseased populations to identify and validate new markers for
9 incorporation into molecular diagnostic tests. The project also provides a
10 framework for a haplotype map of the human genome. The results of the Initiative
11 are incorporated into a variety of Applera’s commercial products and/or services,
12 including, but not limited to the Assays-on-Demand™ SNP Genotyping Kits and
13 the Celera Discovery System.

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17 15. Upon information and belief, Applied Biosystems develops and
18 markets instrument-based systems, reagents, software, and contract services to the
19 life science industry and research community. Customers use these tools and
20 products to analyze nucleic acids (DNA and RNA) and proteins to make scientific
21 discoveries, leading to the development of pharmaceuticals and diagnostic tests,
22 and to conduct genetic testing. Commercial products offered by Applied
23 Biosystems include the Assays-on-Demand™ and the Assays-by-DesignSM SNP
24 Genotyping Kits. Applied Biosystems also markets and distributes the Celera
25 Discovery System.
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1 16. Upon information and belief, the Assays-on-Demand™ and the
2 Assays-by-DesignSM SNP Genotyping Kits are designed, manufactured, marketed
3 and sold by Applied Biosystems for detection and/or analysis of SNPs. At least
4 some, if not the majority of the SNPs analyzed with the Assays-on-Demand™ and
5 the Assays-by-DesignSM SNP Genotyping Kits are in the non-coding region of the
6 genome. Use of the Assays-on-Demand™ and the Assays-by-DesignSM SNP
7 Genotyping Kits involves amplification of genomic DNA with primer pairs.
8 Where the SNP is a non-coding SNP, the amplified genomic DNA spans at least a
9 portion of non-coding region sequences. At least some, if not all of the amplified
10 non-coding region sequences are in genetic linkage with one or more multi-allelic
11 genetic loci. At least some, if not most of the amplified non-coding region
12 sequences contain sufficient non-coding region sequence nucleotides to produce an
13 amplified DNA sequence characteristic of one or more alleles of the genetic loci.
14 The amplified DNA sequences are analyzed to detect the one or more alleles.

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18 17. Upon information and belief, Celera Diagnostics is a joint venture
19 between Applied Biosystems and Celera Genomics. Celera Diagnostics is
20 involved in the discovery, development and commercialization of diagnostic
21 products. Commercial molecular diagnostic test products offered for sale by
22 Celera Diagnostics include, but are not limited to the Cystic Fibrosis ASR product,
23 which includes analyte-specific reagents that detect 33 mutations or
24 polymorphisms in the CFTR gene. Several of the mutations or polymorphisms
25 tested by the Cystic Fibrosis ASR kit are non-coding sequence variants that are
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1 characteristic of one or more coding region alleles of the Cystic Fibrosis locus.
2 The use of the Cystic Fibrosis ASR kit involves using a primer pair to amplify at
3 least a portion of one or more non-coding genomic DNA regions. The amplified
4 DNA sequences are in genetic linkage with the multi-allelic Cystic Fibrosis genetic
5 locus. The amplified DNA sequences are analyzed to detect one or more alleles of
6 the Cystic Fibrosis locus.
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8 18. Upon information and belief, Celera Diagnostics is involved in a
9 collaboration with one or more third parties to study genes for use in the diagnosis
10 and treatment of a variety of diseases. Through this collaboration, Celera
11 Diagnostics obtains clinical samples and data and then conducts studies to correlate
12 genetic variability with a variety of diseases. The project includes analysis of
13 genetic variation associated with approximately 1,000 SNPs in over 3,000
14 clinically defined samples. Goals of the project include the discovery of new
15 markers and development of new diagnostic products. The anticipated resulting
16 correlation of the SNPs to patient clinical symptoms and drug response is expected
17 to support research to develop new diagnostics and treatments for selected
18 diseases.
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20 19. Upon information and belief, Celera Diagnostics is involved in a
21 collaboration with one or more third parties to establish the clinical utility of
22 laboratory tests based on diagnostic markers for a variety in diseases and cancers,
23 including but not limited to cardiovascular disease, diabetes, Alzheimer's disease,
24 breast cancer and prostate cancer. Through these collaborations, Celera
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1 Diagnostics supports current and future disease association studies that seek to
2 identify genetic markers associated with these diseases and cancers.

3 20. Upon information and belief, Celera Diagnostics is involved in a
4 collaboration with one or more third parties to develop, manufacture and market a
5 broad range of *in vitro* molecular diagnostic products for disease detection, disease
6 progression monitoring and therapy selection. Upon information and belief, Celera
7 Diagnostics is planning and developing molecular diagnostic products to detect
8 and manage infectious diseases, chronic conditions, central nervous system
9 disorders and cancer.
10 disorders and cancer.

11 21. Upon information and belief, Applera Corporation, through one or
12 more of its divisions --Applied Biosystems, Celera Genomics, and Celera
13 Diagnostics-- is involved in commercial relationships with one or more third
14 parties to detect, identify and/or determine the chromosomal locations of various
15 genes associated with one or more traits, including, but not limited to disease
16 genes, drug responsiveness genes, drug susceptibility genes, and/or quality trait
17 loci. Upon information and belief, at least some of the studies involve the use of
18 haplotyping to compare the haplotypes exhibited by a trait-bearing population
19 *versus* a general (control) population at multiple chromosomal regions. Upon
20 information and belief, at least some of the studies involve analysis of one or more
21 non-coding sequence variants as surrogate markers for genetically linked
22 polymorphic loci that are associated with the traits. Upon information and belief,
23 polymorphic loci that are associated with the traits. Upon information and belief,
24 polymorphic loci that are associated with the traits. Upon information and belief,
25 polymorphic loci that are associated with the traits. Upon information and belief,
26 polymorphic loci that are associated with the traits. Upon information and belief,
27 polymorphic loci that are associated with the traits. Upon information and belief,
28 polymorphic loci that are associated with the traits. Upon information and belief,

1 at least some of the studies involve detection of one or more non-coding region
2 alleles of such genetically linked polymorphic loci.

3 22. Upon information and belief, Celera Genomics is engaged in
4 integrating advanced technologies to discover and develop new therapeutics by
5 leveraging its capabilities in proteomics, bioinformatics and genomics to identify
6 and validate novel drug targets and to discover novel therapeutic candidates.
7 Celera Genomics is also participating in the commercialization of diagnostic
8 products based on its discoveries through Celera Diagnostics, a joint venture with
9 Applied Biosystems.
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12 **Applera's Infringing Activities Related to the '179 Patent**

13 23. Upon information and belief, on certain unknown dates, beginning
14 well after the filing of the application for the '179 Patent and continuing after the
15 issuance of the '179 Patent, Applera, through Applied Biosystems, Celera
16 Genomics and Celera Diagnostics, began to develop, test, manufacture, market,
17 offer for sale and sell certain products and/or services, including, but not limited to
18 the Cystic Fibrosis ASR kit, the Assays-on-Demand™ SNP Genotyping kits, the
19 Assays-by-DesignSM SNP Genotyping kits and the Celera Discovery System.
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21 . 24. Upon information and belief, on certain unknown dates, beginning
22 well after the filing of the application for the '179 Patent and continuing after the
23 issuance of the '179 Patent, Applera, through Applied Biosystems, Celera
24 Genomics and Celera Diagnostics, began to engage in activities collectively known
25 as the Applera Genome Initiative.
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1 25. Upon information and belief, Applera has designed, tested,
2 manufactured, marketed, offered to sell, and sold its products and/or services,
3 including, but not limited to the Cystic Fibrosis ASR kit, the Assays-on-Demand™
4 SNP Genotyping kits, the Assays-by-DesignSM SNP Genotyping kits and the
5 Celera Discovery System, with full knowledge of the claims of the '179 Patent,
6 and with full knowledge of GTG's rights therein.
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8 26. Upon information and belief, Applera has engaged in activities
9 within the scope of the Applera Genome Initiative with full knowledge of the
10 claims of the '179 Patent, and with full knowledge of GTG's rights therein.
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12 27. Upon information and belief, GTG alleges that each of the
13 limitations of one or more claims of the '179 patent read on Applera's activities in
14 developing and testing various products and/or services, including, but not limited
15 to the Cystic Fibrosis ASR kit, the Assays-on-Demand™ SNP Genotyping kits, the
16 Assays-by-DesignSM SNP Genotyping kits and the Celera Discovery System,
17 thereby constituting direct infringement of the '179 patent.
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19 28. Upon information and belief, GTG alleges that each of the
20 limitations of one or more claims of the '179 patent read on Applera's activities
21 within the scope of the Applera Genome Initiative, thereby constituting direct
22 infringement of the '179 patent.
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24 29. Upon information and belief, GTG alleges that each of the
25 limitations of one or more claims of the '179 patent read on the methods performed
26 by Applera's products and/or services, including, but not limited to the Cystic
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1 Fibrosis ASR kit, the Assays-on-Demand™ SNP Genotyping kits, the Assays-by-
2 DesignSM SNP Genotyping kits and the Celera Discovery System, and the use of
3 such technology and products and/or services by third parties directly infringes the
4 ‘179 Patent.
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6 30. Upon information and belief, GTG alleges that the use of Applera’s
7 products and/or services, including, but not limited to the Cystic Fibrosis ASR kit,
8 the Assays-on-Demand™ SNP Genotyping kits, the Assays-by-DesignSM SNP
9 Genotyping kits and the Celera Discovery System, by Applera’s customers,
10 licensees and others, constitutes infringement of the ‘179 Patent, and that Applera
11 has actively induced this infringement of the ‘179 Patent.
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13 31. Upon information and belief, GTG alleges that Applera’s actions in
14 connection with its instruction and/or training of its customers, licensees and others
15 regarding Applera’s products, including but not limited to the Cystic Fibrosis ASR
16 kit, the Assays-on-Demand™ SNP Genotyping kits, the Assays-by-DesignSM SNP
17 Genotyping kits and the Celera Discovery System, constitute contributory
18 infringement of the ‘179 Patent.
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20 **Applera’s Infringing Activities Related to the ‘762 Patent**

21 32. Upon information and belief, on certain unknown dates, beginning
22 well after the filing of the application for the ‘762 Patent and continuing after the
23 issuance of the ‘762 Patent, Applera, through Applied Biosystems, Celera
24 Genomics and Celera Diagnostics, began to develop, test, manufacture, market,
25 and use certain products and/or services relating to haplotype analysis of genomic
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1 DNA, including, but not limited to creating a haplotype map of the human
2 genome; creating a haplotype map of the mouse genome; creating haplotype maps
3 of genomic DNA of species other than mouse or human; and obtaining genomic
4 DNA samples from individuals exhibiting a variety of traits, including, but not
5 limited to cardiovascular disease, diabetes, cardiovascular drug response,
6 infectious diseases, autoimmune diseases, central nervous system disorders,
7 cancer, quality traits, ethnic characteristics, mouse strain and/or variety
8 characteristics and other disease conditions. Applera and/or its third party
9 collaborators have performed or are in the process of performing haplotype
10 analysis of the genomic DNA samples, including, but not limited to amplification
11 of polymorphic non-coding sequences from a plurality of chromosomal regions;
12 analyzing the amplified DNA sequences to identify the haplotypes of the
13 chromosomal regions; comparing the number of haplotypes at selected
14 chromosomal regions in the trait-bearing individuals *versus* a general population;
15 and identifying one or more regions of decreased haplotype heterogeneity in the
16 trait-bearing group as an indication that the one or more regions are associated with
17 the trait. Upon information and belief, GTG alleges that Applera is offering for
18 sale and selling, or intends to offer for sale and sell haplotype analysis services
19 and/or access to haplotype information databases.

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24 33. Upon information and belief, Applera has designed, developed,
25 tested, manufactured, marketed and used certain products and/or services relating
26 to haplotype analysis of genomic DNA with full knowledge of the claims of the
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1 '762 Patent, and with full knowledge of GTG's rights therein. Upon information
2 and belief, Applera is offering for sale and selling, or intends to offer for sale and
3 sell haplotype analysis services and/or access to haplotype information databases
4 with full knowledge of the claims of the '762 Patent, and with full knowledge of
5 GTG's rights therein.
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7 34. Upon information and belief, GTG alleges that each of the
8 limitations of one or more claims of the '762 patent read on Applera's activities in
9 genomic haplotype analysis, thereby constituting direct infringement of the '762
10 patent.
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12 35. Upon information and belief, GTG alleges that each of the
13 limitations of one or more claims of the '762 patent read on Applera's activities in
14 collaboration with various third parties, thereby constituting direct infringement of
15 the '762 patent.
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17 36. Upon information and belief, GTG alleges that the use of Applera's
18 products and/or services, including, but not limited to the Assays-on-Demand™
19 SNP Genotyping kits, the Assays-by-DesignSM SNP Genotyping kits and the
20 Celera Discovery System, by Applera's customers, licensees and others,
21 constitutes infringement of the '762 Patent, and that Applera has actively induced
22 this infringement of the '762 Patent.
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FIRST CLAIM FOR RELIEF

Direct Patent Infringement – 35 U.S.C. § 271(a)

37. GTG repeats and incorporates by reference all of the allegations of Paragraphs 1 through 36 of this complaint.

38. GTG owns valid and enforceable patent rights in both the '179 and the '762 Patents.

39. Applera has developed, tested, manufactured, marketed, offered for sale, and sold, and continues to develop, test, manufacture, market, offer for sale and sell certain products and/or services that infringe GTG's rights in both the '179 and the '762 Patents.

40. Applera's direct infringement of both the '179 and the '762 Patents has been with full knowledge of GTG's rights therein.

41. As a result of Applera's direct infringement of GTG's rights in both the '179 and the '762 Patents, GTG has suffered, and will continue to suffer, damages in an amount to be shown at trial.

42. Applera's willful infringement of GTG's rights in both the '179 and the '762 Patents warrants an award of treble damages under 35 U.S.C. § 284.

43. Applera's willful infringement of GTG's rights in both the '179 and the '762 Patents makes this an exceptional case warranting an award of GTG's reasonable attorney fees and costs under 35 U.S.C. § 285.

44. As a result of Applera's continuing direct infringement of GTG's rights in both the '179 and the '762 Patents, GTG is suffering irreparable harm. If Applera's infringing conduct is not enjoined, GTG will continue to suffer

1 irreparable harm. As a result, GTG is entitled to injunctive relief pursuant to 35
2 U.S.C. § 283.

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5 **SECOND CLAIM FOR RELIEF**

Inducement of Patent Infringement – 35 U.S.C. § 271(b)

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7 45. GTG repeats and incorporates herein by reference all the allegations
8 of Paragraphs 1 through 44 of this complaint.

9 46. Upon information and belief, Applera has offered training,
10 instruction or other advice to its customers, licensees or others in the use of its
11 products, services and technology, including, but not limited to the Cystic Fibrosis
12 ASR kit, the Assays-on-Demand™ SNP Genotyping kits, the Assays-by-DesignSM
13 SNP Genotyping kits and the Celera Discovery System.

14
15 47. Applera's training, instruction or other advice to its customers
16 regarding the use of its products, services and technology, including, but not
17 limited to the Assays-on-Demand™ SNP Genotyping kits, the Assays-by-DesignSM
18 SNP Genotyping kits and the Celera Discovery System, constitutes an inducement
19 to third parties to infringe the '762 Patent.

20
21 48. Third parties have used Applera's products and/or services,
22 including, but not limited to the Cystic Fibrosis ASR kit, the Assays-on-Demand™
23 SNP Genotyping kits, the Assays-by-DesignSM SNP Genotyping kits and the
24 Celera Discovery System, thereby infringing the '179 Patent, pursuant to the
25 inducement of such infringement made by Applera.
26

1 49. Third parties have used Applera's products and/or services,
2 including, but not limited to the Assays-on-Demand™ SNP Genotyping kits, the
3 Assays-by-DesignSM SNP Genotyping kits and the Celera Discovery System,
4 thereby infringing the '762 Patent, pursuant to the inducement of such
5 infringement made by Applera.
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7 50. Applera has failed to advise these third parties that the method
8 which Applera teaches for use of its products and/or services infringes both the
9 '179 and the '762 Patents.
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11 51. As a result of Applera's inducement to third parties to infringe both
12 the '179 and the '762 Patents, GTG has suffered and will continue to suffer
13 damages in an amount to be shown at trial.

14 52. As a result of Applera's inducement of infringement of others, GTG
15 has suffered irreparable harm. If Applera's inducing conduct is not enjoined, GTG
16 will continue to suffer irreparable harm. As a result, GTG is entitled to injunctive
17 relief pursuant to 35 U.S. § 283.
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19 53. Upon information and belief, Applera's inducement of infringement
20 of both the '179 and the '762 Patents has been willful and malicious, making this
21 an exceptional case under 35 U.S.C. § 285.
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23
24 **THIRD CLAIM FOR RELIEF**

25 Contributory Patent Infringement – 35 U.S.C. § 271(c)

26 54. GTG repeats and incorporates herein by reference all the allegations
27 of Paragraphs 1 through 53 of this complaint.
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1 55. Applera has manufactured, offered for sale, and sold certain
2 products and/or services, including, but not limited to the Cystic Fibrosis ASR kit,
3 the Assays-on-Demand™ SNP Genotyping kits, the Assays-by-DesignSM SNP
4 Genotyping kits and the Celera Discovery System, and methods for their use where
5 such products, services and methods constitute a material part of the inventions
6 claimed in the '179 Patent.
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8 56. Applera's products and/or services and the methods of their use are
9 knowingly and especially made or adapted for use in practicing a patented process as
10 claimed in the '179 Patent.
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12 57. Applera's products and/or services relating to non-coding sequence
13 variation detection and haplotype analysis and the methods of their use are not staples of
14 the industry, and they are not commodities suitable for substantial non-infringing use.
15

16 58. As a result of Applera's development, testing, manufacture and/or sale of its
17 products and/or services, and as a result of its instruction, training or advice in the use of
18 such products and/or services, Applera has contributorily infringed GTG's rights in the
19 '179 Patent.

20 59. As a result of Applera's contributory infringement, GTG has suffered and
21 will continue to suffer damages in an amount to be shown at trial.
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23 60. As a result of Applera's contributory infringement, GTG has
24 suffered irreparable harm. If Applera's contributory conduct is not enjoined, GTG
25 will continue to suffer irreparable harm. As a result, GTG is entitled to injunctive
26 relief pursuant to 35 U.S. § 283.
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1 61. Upon information and belief, Applera's contributory infringement of
2 the '179 Patent has been willful and malicious, making this an exceptional case
3 under 35 U.S.C. § 285.
4

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6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff GTG prays that his Court enter judgment in favor
8 of Plaintiff and against Defendant Applera as follows:
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10 A. Preliminary and permanent injunctions barring Applera, its officers,
11 agents, servants, employees, attorneys, privies, representatives, successors, and
12 assigns, and all other persons acting in concert or participation with or under
13 authority of Applera, from:

14 1. Manufacturing, selling, licensing or offering to sell any
15 products and/or services that infringe GTG's rights in either the '179 or the '762
16 Patent; and
17

18 2. Training, instructing, advising, or in any other way inducing
19 others to use Applera's products and/or services in such a way that
20 infringes GTG's rights in either the '179 or the '762 Patent; and,

21 3. Contributing to any third-party's infringement of GTG's
22 rights in the '179 Patent by selling or distributing Applera's products
23 and/or services to a third party for use in a way that infringes the
24 claims in the '179 Patent.
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1 B. An award of damages in an amount to be determined by the jury, but
2 in no event less than a reasonable royalty to GTG for the rights secured in both the
3 ‘179 and the ‘762 Patents.

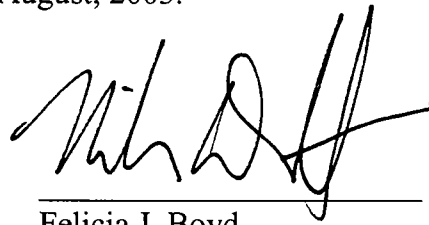
4 C. An award of treble damages in compensation for the exceptional
5 circumstances of Applera’s infringement of GTG’s rights in both the ‘179 and the
6 ‘762 Patents.

7 D. An award of reasonable attorney’s fees and costs incurred by GTG
8 in the litigation of this matter.

9 E. Such other relief as the Court may deem just and proper to award.
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1 Respectfully submitted this 11th day of August, 2003.

2
3
4 By:



5 Felicia J. Boyd
6 Natalie Hanlon-Leh
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16 Martin R. Glick
17 Todd E. Thompson
18 HOWARD, RICE, NEMEROVSKI,
19 CANADY, FALK & RABKIN
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25 ATTORNEYS FOR PLAINTIFF
26 GENETIC TECHNOLOGIES
27 LIMITED
28

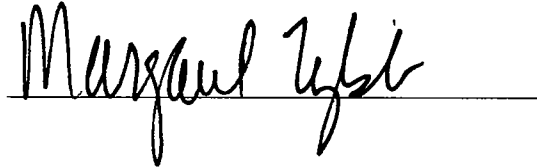
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2003, a true and correct copy of the foregoing FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT was placed in the United States Mail, postage prepaid, with a courtesy copy by facsimile transmission, correctly addressed to the following:

Nicholas Groombridge
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DNVR1:60239535.01