

**O-229-15**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 3034581  
BY RETROSCREEN VIROLOGY LIMITED TO REGISTER THE TRADE MARK**

**BIINTEL**

**IN CLASS 35 AND 42**

**AND IN THE MATTER OF OPPOSITION  
THERETO UNDER NO 402032  
BY INTEL CORPORATION**

## Background and pleadings

1) Intel Corporation (“the opponent”) opposes the application on the basis of Section 5(3) of the Trade Marks Act 1994 (the Act). This is on the basis of its earlier UK registrations 2108574 and 1411048, both in respect of the mark INTEL and in respect of various goods and services in classes 9, 16 and 38 and class 9 respectively. It claims these marks are similar and that they have a reputation in respect of *computer hardware, semiconductor processors, semiconductor processor chips and microprocessors* and *computer software* respectively. In particular the opponent argues that use of the opposed mark by Retroscreen Virology Limited (“the applicant”) will take unfair advantage of the distinctive character and repute of the opponent’s marks and be detrimental to the distinctive character of its marks.

2) The list of services for which the application has been made is:

**Class 35:** *Investigation and research services relating to cost and business efficiency, all relating to pharmaceuticals, medicine, medicines, vaccines, science, bacteriology, toxicology, chemistry, clinicology, oncology, biochemistry and biotechnology; systemisation and compilation of medical information into computer databases; statistical information all relating to pharmaceuticals, medicine, medicines, vaccines, science, bacteriology, toxicology, chemistry, clinicology, oncology, biochemistry and biotechnology; registration services for diagnostic testing; product demonstration services in the field of diagnostic testing; computer database management services, including information storage and retrieval services in the fields of diagnostic testing and preparations for the treatment, monitoring or diagnosis of disease; trade information services in the fields of medical, health, or clinical care; database management of diagnostic testing and results, database management of medical, hospital, insurance or billing records; collation and provision of business information for the purpose of providing referral services in the fields of medical, health or clinical care; collation and provision of business information for the purpose of providing information services providing results from diagnostic testing in relation to medicine and pharmacy; collation and provision of business information regarding medical and pharmaceutical testing procedures; collation and provision of business information for the regarding disease conditions and disease prevention; collation and provision of business information regarding medical, hospital, insurance or billing records.*

**Class 42:** *Medical research services; conducting clinical trials; medical laboratory services; medical laboratory services for the analysis of samples taken from patients; scientific analysis and research services; product development relating to pharmaceuticals, medicines, medicaments and veterinary products; medical and health care testing services, namely clinical testing services, physician testing services for assisting pharmacists, pharmacy testing services, medical laboratory and testing services; medical research into the causes and treatment of influenza and the common cold.*

3) The applicant filed a counterstatement denying these claims. It admits that the opponent’s marks enjoy a reputation in respect of “semi-conductor processors”,

“semiconductor processor chips” and “microprocessors”, but does not admit that reputation attaches to the marks in respect of the broad category of goods “computer hardware”.

4) Both sides filed evidence in these proceedings and the opponent also filed written submissions. Both sides ask for an award of costs. The matter came to be heard on 25 February 2015 when the opponent was represented by Ms Jacqueline Reid of Counsel instructed by Nabarro LLP and the applicant represented by Mr Simon Malynicz of Counsel, instructed by Groom, Wilkes and Wright LLP.

## Opponent’s Evidence

5) This takes the form of a witness statement by Ms Rebecca Day, a solicitor at Nabarro LLP, the opponent’s representative in these proceedings. Ms Day explains that the evidence has been filed at the same time as separate written submissions with the purpose of introducing into evidence documents referred to in the submissions. These documents are:

**Exhibit RAD1:** an article obtained from the website [www.banxia.com](http://www.banxia.com) on the subject of “Data Envelopment Analysis”. It is described as helping to measure and improve the performance of organisations. Exhibit RAD3 consists of an academic paper on the same subject. The purpose of these exhibits is to demonstrate computer technology forms a central part of the opposed services and that the consumer of such services will make the mental connection to the INTEL mark when confronted with the mark BIOINTEL;

**Exhibits RAD3 – RAD9:** Extracts from the following websites intended to confirm that computer technology plays a central role in the provision of services of the type which are specified in the applicant’s list of services:

[www.enigmadiagnostics.com](http://www.enigmadiagnostics.com): It describes how a company called Enigma develops rapid molecular diagnostic instrument platforms for use at point-of care in healthcare;

[www.tecan.com](http://www.tecan.com): a page entitled “Clinical solutions” and describes how “Automated sample preparation and testing is now commonplace in clinical laboratories around the globe, both for routine diagnostics and cutting-edge research”. The third page also illustrates various “Platforms for Biopharma/Research and Clinical Diagnostics” and the fourth page is entitled “Software” and discusses various software solutions for a variety of laboratory activities;

[www.abpi.org.uk](http://www.abpi.org.uk): these pages discuss clinical trial simulations and that these are an integral part of clinical development programmes;

[www.nets.nihr.ac.uk](http://www.nets.nihr.ac.uk): this discusses a Health Technology Assessment Programme. It states that such research is undertaken to show that a technology can be effective;

[www.bts.ucsf.edu](http://www.bts.ucsf.edu): this is an extract from the website of the University of California's Center for Drug Development Science and consists of an article entitled "Simulation in Drug Development: Good Practices". In its introduction it is stated that "The basic rationale for computer simulation has existed for many years ...". On page 12, computer requirements are discussed and the need for a fast CPU;

[www.marketsandmarkets.com](http://www.marketsandmarkets.com): this consists of a press release entitled "eClinical Solutions Market worth \$5 Billion by 2018".

[www.oracle.com](http://www.oracle.com): this page carries the slogan "Hardware and Software Engineered to Work Together" and an article entitled "End-to-End E-Clinical Coverage with Oracle Health Sciences InForm GTM"

**Exhibits RAD10 –RAD13:** Extracts from the opponent's own websites illustrating its presence and initiatives in the health sector. These show the opponent's "embedded systems" and "architecture solutions" for use in the healthcare industry. Particular healthcare apparatus is identified as being "powered by Intel® Xeon® processors". Intel's solutions for healthcare cloud computing are also discussed. This takes the form of what is described as "Intel® Hardware-assisted Security Intel® Xeon® processor E5 family". The last of these exhibits is a copy of a "Product Brief" for "Intel® Expressway Service Gateway for Healthcare";

**Exhibit RAD14:** extracts from the opponent's Twitter feed at <http://twitter.com/IntelHealth> and entitled *Intel Health*. In the extract, the feed is described as "Facilitating conversations and providing you useful information about health IT and bio IT topics. The feed was established in 2008 and has 5,097 tweets and 9,264 followers.

## **Applicant's Evidence**

6) This is in the form of a witness statement by Mr Ian Wilkes, trade mark attorney and a partner of Groom, Wilkes & Wright LLP, the applicant's representatives in these proceedings. This consists substantially of submissions that I will not summarise here, but I will keep them in mind and refer to them as appropriate in my decision. The evidence contained in the statement can be summarised as follows:

- Exhibit IW1 consists of extracts of the applicant's website showing the nature of its services;
- Exhibit IW2 consists of a print-out from the website of Oxford Dictionaries that provides a definition for the word "Intel" as an abbreviation for "intelligence";
- Exhibit IW3 consists of similar definitions obtained from the websites of Dictionary.com, Merriam Webster and The Free Dictionary by Farlax;
- Exhibit IW4 consists of an extract from Dictionary.com illustrating that "Bio" in combining form relates to "life";
- Exhibit IW5 consists of print-outs of case details of Community Trade Marks and UK marks that all incorporate the suffix INTEL, such as PRINTEL, SKINTEL, SUPRALINTEL, MINTEL, CINTEL, SDINTEL and PINTEL;

- Exhibit IW6 consists of the marks PRINTEL, MINTEL and CINTEL in use.

## Opponent's Evidence-in-reply

7) This takes the form of a second witness statement by Ms Day. This consists of submissions that I will not detail here, but I will keep in mind.

## Legislation

8) Section 5(3) states:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark or international trade mark (EC), in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

9) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Addidas-Salomon*, [2004] ETMR 10 and Case C-487/07, *L'Oreal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure*).

## Reputation

10) 'Reputation' for the purposes of Section 5(3) means that the earlier mark is known by a significant part of the public concerned with the products or services covered by that mark (paragraph 26 of the CJEU's judgment in *General Motors Corp v Yplon SA (CHEVY)* [1999] ETMR 122 and [2000] RPC 572).

11) By letter of 3 July 2014, the opponent's representative requested conformation that the Registry was prepared to take judicial notice of the opponent's reputation in the mark INTEL in respect of the goods relied upon. The Registry's reply of 9 July 2014 went further than confirming this. It accepted a reputation in respect of "computer related goods and services" as per the findings of the Court of Appeal in *Intel Corporation Inc v CPM United Kingdom Ltd* [2007] ETMR 59. It was this broader description of products that Ms Reid wished to rely upon at the hearing and claiming that the opponent intentionally did not file evidence to support its reputation in respect of this broad description of products in light of the Registry's recognition of its reputation. As I informed Ms Reid at the hearing, the opponent's earlier marks are limited to a list of goods (and not services) and, as such, this defined the scope of what it may rely upon. Therefore, even if there is recognition that the opponent's

reputation is in respect of broader goods and services than listed in its earlier marks it is not relevant in respect of identifying the scope of reputation for the purposes of considering the case brought under Section 5(3) of the Act.

12) In light of the above, I conclude that the opponent has a significant reputation in the UK in respect of the goods it relies upon, namely *computer hardware, semiconductor processors, semiconductor processor chips, microprocessors* (page 7 of its Form TM7) and *computer software* (page 11 of its Form TM7).

## The Link

13) Having established the existence and scope of a reputation, I need to go on to consider the existence of the necessary link. I am mindful of the comments of the CJEU in *Intel* that it is sufficient for the later trade mark to bring the earlier trade mark with a reputation to mind for the link, within the meaning of *Adidas-Salomon and Adidas Benelux*, to be established. The CJEU also set out the factors to take into account when considering if the necessary link exists:

“41. The existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case (see, in respect of Article 5(2) of the Directive, *Adidas-Salomon and Adidas Benelux*, paragraph 30, and *adidas and adidas Benelux*, paragraph 42).

42. Those factors include:

- the degree of similarity between the conflicting marks;
- the nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;
- the strength of the earlier mark’s reputation;
- the degree of the earlier mark’s distinctive character, whether inherent or acquired through use;
- the existence of the likelihood of confusion on the part of the public.”

14) In Case C-408/01, *Addidas-Salomon*, the CJEU held that:

“28. The condition of similarity between the mark and the sign, referred to in Article 5(2) of the Directive, requires the existence, in particular, of elements of visual, aural or conceptual similarity (see, in respect of Article 5(1)(b) of the Directive, Case C-251/95 *SABEL* [1997] ECR I-6191, paragraph 23 in fine, and Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraphs 25 and 27 in fine).

29. The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark

and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them (see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23).”

15) In Case C-254/09P *Zafra Marroquinos v Calvin Klein Trademark Trust*, the CJEU rejected an appeal against a judgement of the General Court (“the GC”) rejecting an opposition against a Community trade mark application under article 8(5) of the Community Trade Mark Regulation, which is analogous to Section 5(3) of the Act. The court held that:

“68. It should be noted that, in order for Article 8(5) of Regulation No 40/94 to be applicable, the marks at issue must be identical or similar. Consequently, that provision is manifestly inapplicable where, as in the present case, the General Court ruled out any similarity between the marks at issue.”

16) Mr Wilkes, in his witness statement, submits that the respective marks are not similar and, in particular, relies upon part of the well established guidance of the CJEU in *Sabel BV v Puma AG, Rudolf Dassler Sport* Case C-251/95 that states that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. As Ms Reid submitted at the hearing, the opponent’s mark is wholly contained within the applicant’s mark. I agree with Ms Reid’s submission that the applicant’s mark would be expressed as BIO-INTEL with a natural break being made in the mind of the consumer between the BIO and INTEL elements. It is self evident to any native English speaker that the natural break in the mark is between these two elements. Taking this into account, I disagree with Mr Wilkes’ submission and find that there is similarity between the marks.

17) Mr Malynicz submitted that the applicant was not providing “computer linked services” as the opponent submitted but he did not deny that, like all businesses, it uses computers. However, he submitted that it is unrealistic to say that the services of the applicant would properly be described as having any specific link to computers. He then goes on to describe the applicant’s services as “medical research and life science services, in particular technology platforms which use human challenge models of disease involving healthy volunteers to study new drugs and investigate disease in a safe, controlled, clinical environment”. Mr Wilkes, at paragraph 8 of his witness statement, claims that it is unrealistic that the applicant’s services could be properly described as having any specific link to computers. However, as Ms Day in her reply evidence pointed out, he went on to describe the applicant’s services as “medical research and life science services, in particular technology platforms” (my emphasis). I note this and also the fact that the services listed in the applicant’s specifications of services are all services that can be provided via technology platforms. This raises the question of whether the services listed, when provided via technology platforms, are of a nature that use of the applicant’s mark in respect of such services would result in the necessary link being made with the opponent’s mark.

18) Ms Reid attempted to address this point by drawing attention to the opponent’s evidence illustrating that it has its own healthcare division (Exhibit RAD10) and provides software to the field, and that the opponent’s goods are used as a solution

in the healthcare field. Exhibit RAD 11, page 8 illustrates that the opponent provides solutions for managing health record databases. Further, Exhibit RAD 12 illustrates the deployment of the opponent's processors in healthcare security, Exhibit RAD 13 product brief refers to hospitals, and Exhibit RAD14 illustrates an INTEL HEALTH *Twitter* feed that has been going since November 2008. Ms Reid submitted that there is a reasonable inference that this last exhibit is typical of the type of information that appeared on the *Twitter* feed.

19) Mr Malynicz criticised this evidence, taking the view that they were technical in nature and difficult to understand and therefore, they should be considered with a degree of caution.

20) Mr Malynicz recognised that the opponent's chips are inside computers which have medical uses and that cloud computing in the healthcare field utilises technologies that deploy the opponent's processors. However, he submitted that this is not decisive claiming that it does not follow the opponent has "penetrated all economic and social activity of mankind". He submitted that the opponent does not have a reputation in respect of all services that use computers. As Mr Malynicz submitted, cases such as *Mercury Communications Ltd v Mercury Interactive (UK) Ltd* [1995] highlighted the dangers of such excessively wide protection and that there is a difference between having a reputation in this field and the mark being used in the field. I agree with Mr Malynicz. Further, the opponent relies upon a reputation in respect of Class 9 goods only and, therefore, any claimed reputation in respect of services is irrelevant to these proceedings. Despite Ms Reid's best efforts to argue that software in Class 9 and research are very closely linked and with the same consumers, the evidence adduced by the opponent, as best as I can glean from these rather technical texts, appears to show that the opponent targets the healthcare industry in respect of its "embedded systems" and "architecture solutions". This appears to be promotion of its Intel Xenon computer processor. In other words it is promoting a component of a computer. The opponent's solutions in respect to healthcare cloud computing are also identified in the evidence. This latter activity appears to relate to maintaining the privacy and security of personal health information where its "technologies can support the need for compliance with local regulation of healthcare information" and offers "a range of hardware-assisted security technologies, including accelerated encryption, anti-theft, identity protection, malware detection, and remote management of PCs, laptops, and devices."

21) What is clear to me is that what is offered by the opponent to the healthcare industry is its hardware technologies that have a wider application than just the healthcare industry. In this respect, I accept that its reputation extends into the healthcare sector. However, such a reputation does not extend into the type of services listed in the applicant's Class 42 services. In this respect, I agree with Mr Malynicz that the opponent does not have a reputation in respect to all services that utilise computers. That is not a conclusion I reach from considering the evidence, nor is it a conclusion I am able to reach in light of the opponent's two earlier marks that are only in respect of goods.

22) In light of the above, I conclude that the opponent's goods and the applicant's Class 42 services are different in nature, intended purpose and methods of use. They do not share the same trade channels and neither are they in competition nor

complementary. Consequently, I find that there is no similarity between the applicant's Class 42 services and the opponent's goods. I keep this factor in mind when considering if the necessary link exists.

23) I now return to the similarity between the marks. I have already found that the consumer will naturally break the applicant's mark into BIO and INTEL and that this creates some similarity between the marks. I must consider whether this is sufficient to create the necessary link. In *Intra-Press SAS v OHIM*, Joined cases C-581/13P & C-582/13P, the CJEU stated (at paragraph 72 of its judgment) that:

“The Court has consistently held that the degree of similarity required under Article 8(1)(b) of Regulation No 40/94, on the one hand, and Article 8(5) of that regulation, on the other, is different. Whereas the implementation of the protection provided for under Article 8(1)(b) of Regulation No 40/94 is conditional upon a finding of a degree of similarity between the marks at issue so that there exists a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not necessary for the protection conferred by Article 8(5) of that regulation. Accordingly, the types of injury referred to in Article 8(5) of Regulation No 40/94 may be the consequence of a lesser degree of similarity between the earlier and the later marks, provided that it is sufficient for the relevant section of the public to make a connection between those marks, that is to say, to establish a link between them (see judgment in *Ferrero v OHMI*, C-552/09 P, EU:C:2011:177, paragraph 53 and the case-law cited).”

24) I must, therefore, consider whether the relevant section of the public (in this case, the customers and potential customers of the opponent's goods) will make a connection between the two marks. The applicant's mark consists of the two conjoined elements BIO and INTEL. Ms Reid submitted that only the BIO element is descriptive and consequently the INTEL element will be perceived as a reference to the opponent's mark. I concur with Mr Malynicz's submission that the word INTEL, when combined with the prefix BIO, has the obvious meaning of BIOlogical INTELigence. Mr Wilkes, at Exhibit IW3, provides dictionary extracts illustrating that “Intel” means “information in general”. This is the one and only meaning that will be perceived by the consumer, especially when the mark is utilised in respect of the applicant's Class 42 services. In this circumstance the consumer will not be led to wonder if there is a connection with the opponent's mark. Such a conclusion becomes even more compelling when I also give regard to the fact that the opponent's goods and the applicant's services are dissimilar (whilst still recognising that similarity is not a prerequisite for success under Section 5(3) of the Act).

25) Ms Reid referred to the comments of the GC in *The Coca-Cola Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, paragraph 74, where it was stated:

“In the present case, the global assessment under Article 8(5) of Regulation No 207/2009, to determine whether the relevant public makes a link between the marks at issue, leads to the conclusion that, given the degree of similarity, however faint, between those marks, there is a risk that the relevant public might establish such a link. Although the signs at issue are only slightly

similar, it is not altogether inconceivable that the relevant public could make a link between them and, even if there is no likelihood of confusion, be led to transfer the image and the values of the earlier marks to the goods bearing the mark applied for (see, to that effect, judgment in *BEATLE*, paragraph 25 above, EU:T:2012:177, paragraph 71). Thus, contrary to the Board of Appeal's conclusion in paragraph 33 of the contested decision, there is a sufficient degree of similarity between the signs at issue, for the purposes of the case-law cited in paragraph 32 above, for the relevant public to make a connection between the mark applied for and the earlier Community trade marks, that is to say, to establish a link between them for the purposes of that provision."

26) Certainly, there will be some circumstances when marks are only "slightly similar" that will result in the link being established, as is the case in the *Coca-Cola* case. However, I do not understand the GC to be setting down a rigid rule that a link will be established in all cases where the marks share only a faint degree of similarity. The GC's comments were made in the context of the facts of that case and it is my view that, for the reasons expressed earlier, despite the applicant's mark sharing the INTEL element, the link is not established when considering the facts in respect of the applicant's class 42 services.

27) Mr Malynicz also made the point that the opponent does not have a reputation in respect of a family of marks incorporating the word INTEL, and it is precisely because the opponent uses INTEL alone that gives the mark its uniqueness and as such use of INTEL in combining form as applied for would not result in the necessary link being established. Whilst I note this argument, this factual background is not determinative of the issue, but in light of my other findings, it does not affect the outcome, namely that the link has not been established in respect of the applicant's Class 42 services.

28) I now turn to consider the opponent's case in respect of the applicant's Class 35 services. In respect of the applicant's *investigation and research services...., statistical information...., registration services for diagnostic testing, product demonstration services...., trade information services... and providing results from diagnostic testing....*, these are all services where the consumer is likely to perceive the applicant's mark as an allusive reference to biological intelligence (see paragraph 24, above) and consequently, they will not make any link with the opponent or its INTEL marks.

29) The considerations in respect of the applicant's *systemisation and compilation of medical information... and its various collation and provision of business information...* are less clear cut and where the where the opponent's case is strongest. This is because these services relate more closely to the general actions of business services, and may share the same intended purpose as the computer hardware and software relied upon by the opponent. Consequently, the relevant public, if exposed to the applicant's mark in respect of these services may not quite so readily make the link to the mark's allusive meaning (discussed in paragraphs 24 and 28). This may have the effect upon increasing the likelihood of the applicant's mark being perceived as the suffix BIO being attached to the opponent's mark. However, whilst I recognise this as a possibility, it is my view that the allusive

character of the applicant's mark is robust enough such that it will still be perceived by consumers as suggesting biological intelligence and not BIO plus the opponent's mark. This view is further supported by the fact that the applicant's services are limited in one form or another to being in the medical field. Consequently, the necessary link has not been established for these or any other of the applicant's Class 35 services.

30) Even if I am wrong and the opponent's customers, when exposed to the applicant's mark, would bring the opponent's mark to mind, the nature of the link is such that it would not result in any unfair advantage or detriment to the opponent. Any notion of a commercial link between the two marks would be quickly dismissed in favour of the allusive meaning identified in paragraph 24 above.

31) Therefore, the opposition fails in its entirety.

## **COSTS**

32) The applicant has been successful and is entitled to a contribution towards its costs, according to the published scale in Tribunal Practice Notice 4/2007. I take account that both sides filed evidence and that a hearing has taken place. I award costs as follows:

Considering the statement of case and preparing counterstatement	£300
Evidence	£800
Preparing for and attending hearing	£900
<b>Total:</b>	<b>£2000</b>

33) I order Intel Corporation to pay Retroscreen Virology Limited the sum of £2000 which, in the absence of an appeal, should be paid within 14 days of the expiry of the appeal period.

**Dated this 20th day of May 2015**

**Mark Bryant  
For the Registrar,  
The Comptroller-General**