DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
2098 Gaither Road
Rockville MD 20850

Veridex, LLC
c/o Debra J. Rasmussen
33 Technology Park
PO Box 4920
Warren, New Jersey 07059

SEP 29 2004

Re: K031588
Evaluation of Automatic Class III Designation
CellSearch Epithelial Cell Kit/Cell Spotter Analyzer
Regulation Number: 21 CFR 866.6020
Classification: II
Product Code: NQI

Dear Ms. Rasmussen:

This letter corrects our classification order of January 21, 2004, which did not identify the intended use as it was stated in the labeling of your application. The intended use, as stated in the labeling, was/is:

"The CellSearch™ Epithelial Cell Kit is intended for the enumeration of circulating tumor cells (CTC) of epithelial origin (CD45-, EpCAM+, and cytokeratins 8, 18+, and/or 19+) in whole blood.

The presence of CTC in the peripheral blood, as detected by the CellSearchTM Epithelial Cell Kit, is associated with decreased progression free survival and decreased overall survival in patients treated for metastatic breast cancer. A CTC count of 5 or more per 7.5mL of blood is predictive of shorter progression free survival and overall survival."

The Center for Devices and Radiological Health (CDRH) of the Food and Drug Administration (FDA) has completed its review of your petition for classification of the CellSearch Epithelial Cell Kit / CellSpotter Analyzer that is intended for use in adjunctively monitoring and predicting cancer disease progression and response to therapy. FDA concludes that this device, and substantially equivalent devices of this generic type, should be classified into class II. This order, therefore, classifies the CellSearch Epithelial Cell Kit / CellSpotter Analyzer, and substantially equivalent devices of this generic type into class II under the generic name, Immunomagnetic Cancer Cell Selection and Enumeration System. This order also identifies the special controls applicable to this device.

FDA identifies this generic type of device as:

21 CFR 866.6020-Immunomagnetic Circulating Cancer Cell Selection and Enumeration System Immunomagnetic circulating cancer cell selection and enumeration systems are devices consisting of biological probes, fluorochromes, and other reagents; preservation and preparation devices; and a semi-automated analytical instrument to select and count circulating cancer cells in a prepared sample of whole blood. This device is intended for adjunctive use in monitoring or predicting cancer disease progression, response to therapy, and for the detection of recurrent disease.

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)(1)) (the act), devices that were not in commercial distribution prior to May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976 (the amendments)), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 of the FDA regulations (21 CFR 807).

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) for a device may, with in 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request classify the device type. This classification shall be the initial classification of the device type. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** classifying the device type.

On January 5, 2004, FDA filed your petition requesting classification of the CellSearch Epithelial Cell Kit / CellSpotter Analyzer into class II. The petition was submitted under section 513(f)(2) of the act. In accordance with section 513(f)(1) of the act, FDA issued an order on December 24, 2003, automatically classifying the CellSearch Epithelial Cell Kit / CellSpotter Analyzer in class III, because it was not within a type of device which was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, which was subsequently reclassified into class I or class II. In order to classify the CellSearch Epithelial Cell Kit / CellSpotter Analyzer into class I or II, it is necessary that the proposed class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

After review of the information submitted in the petition, FDA has determined that the CellSearch Epithelial Cell Kit / CellSpotter Analyzer intended for adjunctive use in monitoring or predicting cancer disease progression, response to therapy, and for the detection of recurrent disease can be classified in class II with the establishment of special controls. FDA believes that class II special controls provide reasonable assurance of the safety and effectiveness of the device type.

There are no known direct risks to patient health when tests are used as an aid to monitoring and predicting cancer disease progression and response to therapy. However, failure of the test to perform as indicated or error in interpretation of results may lead to improper medical management of patients with cancers that may progress or respond to therapy. A false negative interpretation could lead to failure to detect disease progression or failure to treat appropriately. A false positive result could lead to unnecessary treatment, and alteration of medical decision making.

FDA has identified the risks to health generally associated with the use of the CellSearch Epithelial Cell Kit / CellSpotter Analyzer addressed in the special controls document, *"Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System"*. The measures recommended to mitigate these identified risks are given in this guidance document and include labeling, instrumentation validation, reproducibility, use of control materials, and clinical studies. The premarket notification should describe the risk analysis method.

In addition to the general controls of the act, the CellSearch Epithelial Cell Kit / CellSpotter Analyzer is subject to the following special controls: *"Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System"*. Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the device is not exempt from the premarket notification requirements. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the Immunomagnetic Circulating Cancer Cell Selection and Enumeration System they intend to market prior to marketing the device. A notice announcing this classification order will be published in the **Federal Register**.

A copy of this order and supporting documentation are on file in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers

Lane, Room 1061, Rockville, MD 20852 and are available for inspection between 9 a.m. and 4 p.m., Monday through Friday.

This letter allows you to continue marketing your device as described in your application. The result of a classification order, allows you to immediately market the device, subject to the general control provisions of the Act and the special ontrols identified in this order.

If you have any questions concerning this corrected classification order, please contact Nina Chace at (301) 594-1293.

Sincerely yours,

S. Gutman

Steven I. Gutman, M.D., MBA
Director
Office of *In Vitro* Diagnostic Device
Evaluation and Safety
Center for Devices and
Radiological Health