

ESTTA Tracking number: **ESTTA304233**

Filing date: **09/02/2009**

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	CompuCyte Corporation		
Entity	Corporation	Citizenship	Massachusetts
Address	385 University Avenue Westwood, MA 02090 UNITED STATES		

Attorney information	Kimberly J. Seluga Sunstein Kann Murphy & Timbers LLP 125 Summer Street Boston, MA 02110 UNITED STATES kseluga@sunsteinlaw.com Phone:617-443-9292		
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Applicant Information

Application No	77709511	Publication date	08/11/2009
Opposition Filing Date	09/02/2009	Opposition Period Ends	09/10/2009
Applicant	Blueshift Biotechnologies, Inc. 1311 Orleans Drive Sunnyvale, CA 94089 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2004/12/31 First Use In Commerce: 2004/12/31 All goods and services in the class are opposed, namely: An instrument for use in laser scanning imaging for high content cell-based assays, colony morphology studies, and multiplexed spot and bead arrays; instrument control software for selection, viewing and analysis of scan results; all the aforementioned for use in research and development of biotechnology applications and products
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Grounds for Opposition

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

U.S. Registration No.	2925751	Application Date	08/20/2002
Registration Date	02/08/2005	Foreign Priority Date	NONE
Word Mark	ICYTE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 009. First use: First Use: 2002/11/01 First Use In Commerce: 2002/11/01 Cytometers for scientific use Class 010. First use: First Use: 2002/11/01 First Use In Commerce: 2002/11/01 Cytometers for medical diagnostic use

Attachments	ISOCYTE Notice of Opposition with exhibit.pdf (6 pages)(274331 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 Overnight Courier on this date.

Signature	/Kimberly J. Seluga/
Name	Kimberly J. Seluga
Date	09/02/2009

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

In the Matter of Application:

Serial Nos.: 77/709,511

Filed: April 8, 2009

Applicant: Blueshift Biotechnologies, Inc.

Mark: ISOCYTE

For: An instrument for use in laser scanning imaging for high content cell-based assays, colony morphology studies, and multiplexed spot and bead arrays; instrument control software for selection, viewing and analysis of scan results; all the aforementioned for use in research and development of biotechnology applications and products, in International Class 9

Published: August 11, 2009

CompuCyte Corporation)
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 Opposer,)
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 v.)
)
 Blueshift Biotechnologies, Inc.)
)
)
 Applicant.)

NOTICE OF OPPOSITION

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Sir or Madam:

CompuCyte Corporation (“Opposer”), a Massachusetts corporation with a place of business at 385 University Avenue, Westwood, Massachusetts 02090, United States, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/709,511, filed on April 8, 2009, and thus hereby opposes said application on the grounds that:

1. Blueshift Biotechnologies, Inc. (“Applicant”) claims to be a Delaware corporation with a place of business at 1311 Orleans Drive, Sunnyvale, California 94089, United States. Application Serial No. 77/709,511, filed by Applicant on April 8, 2009 seeks registration of the mark ISOCYTE in connection with “an instrument for use in laser scanning imaging for high content cell-based assays, colony morphology studies, and multiplexed spot and bead arrays; instrument control software for selection, viewing and analysis of scan results; all the aforementioned for use in research and development of biotechnology applications and products,” in International Class 9, based on Section 1(a) of the Lanham Act (herein referred to as “the Application”). The Application claims first use and first use in commerce as of December 31, 2004.

2. Opposer is a Massachusetts company, with trademark rights in its ICYTE mark in the United States. Opposer has used its ICYTE mark in connection with imaging cytometers in the U.S. since at least as early as 2002.

3. Opposer is the owner of a U.S. registration for the ICYTE mark, Registration No. 2,925,751 for “Cytometers for scientific use,” in International Class 9 and “Cytometers for medical diagnostic use,” in International Class 10, filed on August 20, 2002 and registered on February 8, 2005 (Attached as Exhibit 1).

4. Opposer has been using the ICYTE mark in connection with imaging cytometers since prior to Applicant’s filing of its application and Applicant’s claimed first use of its proposed mark.

5. Opposer’s ICYTE registration is senior to Applicant’s Application.

6. Opposer’s ICYTE mark identifies Opposer as the source of the relevant goods to the relevant segment of consumers, including but not limited to as a result of

Opposer's continuous use of the ICYTE mark in the imaging cytometry instrumentation industry for nearly seven years. Opposer has spent substantial sums of money developing and promoting its ICYTE mark. As a result of the inherent distinctiveness of Opposer's ICYTE mark, and the extensive and continuous use and promotion of the ICYTE mark, the ICYTE mark has become well known as an indication of a single source of origin.

7. Opposer's ICYTE mark embodies extensive goodwill with high industry recognition.

8. The identification of goods in the Application is "an instrument for use in laser scanning imaging for high content cell-based assays, colony morphology studies, and multiplexed spot and bead arrays; instrument control software for selection, viewing and analysis of scan results; all the aforementioned for use in research and development of biotechnology applications and products," which is similar, if not identical to, the product that Opposer offers in connection with Opposer's ICYTE mark, and claimed in Opposer's ICYTE registration. The goods are likely to be offered through the same or related marketing channels to the same class of consumers.

9. Applicant's use and registration of its proposed mark will cause purchasers, prospective purchasers, users and others to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's goods and services emanate from or are sponsored or approved by Opposer or are related to Opposer's goods and services, thereby damaging Opposer.

WHEREFORE, Opposer prays that the present opposition be sustained and registration of the ISOCYTE mark sought by Applicant be refused.

The \$300 filing fee for this opposition will be charged to deposit account no. 19-4972; please charge any additional fees that may be required to this account. This Notice of Opposition is being filed electronically.

Dated: September 2, 2009

By its attorneys,

/Kimberly J. Seluga/

Kerry L. Timbers

Kimberly J. Seluga

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on attorney of record for Applicant, Heather A. Dunn, DLA Piper LLC, 555 Mission Street, Suite 2400, San Francisco, CA 94105-2933, by overnight mail on the above date.

/Kimberly J. Seluga/

Kimberly J. Seluga

EXHIBIT 1



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Typed Drawing

Word Mark	ICYTE
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Cytometers for scientific use. FIRST USE: 20021101. FIRST USE IN COMMERCE: 20021101
	IC 010. US 026 039 044. G & S: Cytometers for medical diagnostic use. FIRST USE: 20021101. FIRST USE IN COMMERCE: 20021101
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78156012
Filing Date	August 20, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	March 18, 2003
Registration Number	2925751
Registration Date	February 8, 2005
Owner	(REGISTRANT) CompuCyte Corporation CORPORATION MASSACHUSETTS 12 Emily Street Cambridge MASSACHUSETTS 021394517
Attorney of Record	Jennifer M. Reynolds
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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