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

|                        |  |
|------------------------|--|
| Proceeding             | 91191763   |
| Party                  | Defendant<br>Blueshift Biotechnologies, Inc.   |
| Correspondence Address | HEATHER A. DUNN<br>DLA PIPER LLP (US)<br>555 MISSION ST STE 2400<br>SAN FRANCISCO, CA 94105-2933<br><br>tmfilings@dlapiper.com |
| Submission             | Answer   |
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| Signature              | /Heather Dunn/   |
| Date                   | 10/13/2009   |
| Attachments            | BlueShift-CompuCyteAnswerNOO.pdf ( 5 pages )(192570 bytes )  |

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

CompuCyte Corporation,  
Opposer,

v.

Blueshift Biotechnologies, Inc.,  
Applicant,

Opposition No. 91191763

BLUESHIFT BIOTECHNOLOGIES, INC.'S ANSWER TO COMPUCYTE  
CORPORATION'S NOTICE OF OPPOSITION

Applicant, Blueshift Biotechnologies, Inc., a Delaware Corporation ("Applicant") hereby answers the Notice of Opposition of CompuCyte Corporation ("Opposer"), as follows:

1. Applicant admits that it is a Delaware corporation with a place of business at 1311 Orleans Drive, Sunnyvale, CA 94089, United States. Applicant admits that Application Serial No. 77709511, which Applicant filed on or about April 8, 2009, seeks registration of the 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, based on Section 1(a) of the Lanham Act (the "Application"). Applicant admits that the Application claims first use and first use in commerce at least as early as of December 31, 2004.

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2. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 2, and on that basis denies each and every allegation thereof.

3. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 3, and on that basis denies each and every allegation thereof.

4. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 4, and on that basis denies each and every allegation thereof.

5. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 5, and on that basis denies each and every allegation thereof.

6. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 6, and on that basis denies each and every allegation thereof.

7. Applicant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 7, and on that basis denies each and every allegation thereof.

8. Applicant admits that 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.” Applicant is without sufficient knowledge or information upon which to form a belief as to the truth of the remainder of the

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allegations contained in Paragraph 8, and on that basis denies each and every remaining allegation thereof.

9. Applicant denies each and every allegation contained in Paragraph 9.

## **AFFIRMATIVE DEFENSES**

### **I**

#### **FIRST AFFIRMATIVE DEFENSE** **(Failure to State Grounds For Opposition)**

The facts set forth in Opposer's Notice of Opposition are insufficient to state a claim or to support an opposition to Applicant's Application Serial No. 77709511.

### **II**

#### **SECOND AFFIRMATIVE DEFENSE** **(Laches)**

Opposer's Claims are barred by the doctrine of Laches.

### **III**

#### **FOURTH AFFIRMATIVE DEFENSE** **(Acquiescence)**

Opposer's Claims are barred by the doctrine of Acquiescence.

### **IV**

#### **FOURTH AFFIRMATIVE DEFENSE** **(Estoppel/Waiver)**

Opposer's Claims are barred by the doctrine of Estoppel and Waiver.

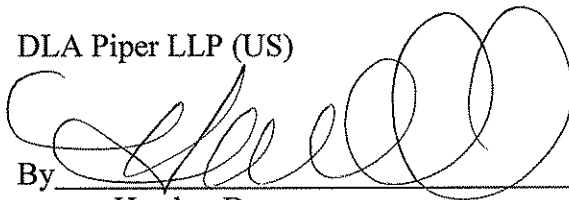
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WHEREFORE, Applicant prays that Opposer's Notice of Opposition be dismissed with prejudice and Application Serial No. 77709511 be issued a registration.

Please charge any filing fees of this Answer to Notice of Opposition to Deposit Acct. No. 07-1907. Please charge any additional fees or credit any overpayment to Deposit Acct. No. 07-1907.

Dated: October 13, 2009

DLA Piper LLP (US)



By \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the following document: BLUESHIFT BIOTECHNOLOGIES, INC.'S ANSWER TO COMPUCYTE CORPORATION'S NOTICE OF OPPOSITION was served on Opposer, CompuCyte Corporation, by depositing the same in the United States mail, First Class Mail, postage prepaid, addressed to Opposer's counsel of record as follows:

Kimberly J Seluga, Esq.  
Sunstein Kann Murphy & Timbers LLP  
125 Summer Street  
Boston, MA 02110

this 13th day of October 2009.



Angela Fukuda