ESTTA Tracking number: **ESTTA76977**

Filing date: **04/19/2006**

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	BIOTEST AG
Granted to Date of previous extension	04/19/2006
Address	Waldfriedstrasse 4 Frankfurt/Main, 60 528 GERMANY

Attorney information	Joseph E. Maenner RatnerPrestia P.O. Box 980 Valley Forge, PA 19482-0980 UNITED STATES TMVF@ratnerprestia.com Phone:(610) 407-0700

Applicant Information

Application No	78449968	Publication date	12/20/2005
Opposition Filing Date	04/19/2006	Opposition Period Ends	04/19/2006
Applicant	BioVest International, Inc. 8500 Evergreen Boulevard NW Minneapolis, MN 55433 UNITED STATES		

Goods/Services Affected by Opposition

Class 009.
All goods and sevices in the class are opposed, namely: Scientific devices for the development, production and proliferation of proteins, namely bioreactors for automated cell culture and protein production, automated protein purification systems, culture ware consisting of disposable inserts for said bioreactors and purification systems; replacement parts for said bioreactors and purification systems; and control systems for use with said bioreactors and purification systems

Related Proceedings	Opposition of Serial No. 78/449,930 and Opposition of Serial No. 78/449,977

Attachments	SSM-909 NotOfOpp.pdf (7 pages)(320417 bytes)

Signature	/Joseph E. Maenner/
Name	Joseph E. Maenner
Date	04/19/2006

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

Biotest AG (A German Corporation) Waldfriedstrasse 4 60528 Frankfurt/Main Federal Republic of Germany Opposer	Trademark Registration Application Serial No. 78/449,968 Filed: July 13, 2004 Mark: BIOVEST
v.	Published in the Official Gazette: Dec. 20, 2005
BioVest International, Inc. 8500 Evergreen Blvd, NW Minneapolis, MN 55433 Applicant	**Opposition No.** _____

NOTICE OF OPPOSITION

In the matter of the application for registration of the mark BIOVEST for "Scientific devices for the development, production and proliferation of proteins, namely bioreactors for automated cell culture and protein production, automated protein purification systems, culture ware consisting of disposable inserts for said bioreactors and purification systems; replacement parts for said bioreactors and purification systems; and control systems for use with said bioreactors and purification systems," in International Class 009 in Serial No. 78/449,968 filed July 13, 2004 by BioVest International, Inc. (hereinafter "Applicant") and published for opposition on Page TM 396 of the Official Gazette dated December 20, 2005, Biotest AG (hereinafter "Opposer") believes that it would be damaged by such registration, and hereby opposes the registration of Applicant's mark.

The grounds for the opposition are as follows:

1. Opposer is a German corporation. Opposer has a place of business at Waldfriedstrasse 4, 60528 Frankfurt/Main, Federal Republic of Germany.

2. Opposer is in the business of developing and distributing a wide variety of pharmaceutical products including, among other things, reagents, sera, antibodies, and antigens, as well as diagnostic products including those for the treatment of infections.

3. Opposer uses **BIOTEST** (and design), in both a word format and a composite logo format (including the word **BIOTEST** and a design), as its trade name and as a trademark/service mark in connection with its goods and services, as an indicator of the source of its goods and services.

4. Opposer is the owner of U.S. Registration No. 2,961,650, filed on February 21, 2002 and registered on June 14, 2005, and claiming dates of first use in July 2, 1977, for the mark **BIOTEST** (and design) for:

a) International Class 001: in-vitro diagnostic preparations for scientific purposes; test kits comprising reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents for scientific and research purposes; systems for determining resistance for scientific purposes comprising nutrient media, cell culture media, and dried media; buffers, salts, solvents for research and scientific purposes; test kits comprising buffers, salts, solvents and reagents for industrial and scientific purposes for hygiene monitoring on surfaces, in air and liquids, and systems for identification of germs for scientific and research purposes comprising nutrient media, buffers and salts; DNA probes for tissue typing, germ or pathogen identification and blood group determination;

b) International Class 005: pharmaceutical and veterinary preparations and products for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; food for babies; medical plasters; materials for wound, burn or surgical dressing; pharmaceutical preparations for hematology, oncology, transplantation medicine, nephrology, pediatrics, for intensive care medicine namely blood products, immune globulin preparations, globulin preparations, coagulation factors; medicines for use in transplantation procedures and for influencing blood coagulation; immune globulin preparations for treating immune insufficiencies, especially autoimmune insufficiencies, cancer, virus infections, conditions of virus reactivation, anemia, protein anemia, immune globulin anemia, blood coagulation disorders, and deficiencies in blood coagulation factors, or for preventing rejections in transplantation medicine; serum preparations, and serum proteins and solutions comprising the same for medical use; human albumin for medical use; blood products for medical use, namely blood plasma; blood substitutes; plasma substitutes and plasma expanders; vaccines, especially

on basis of immune globulines; blood coagulation preparations, especially coagulation factors for clinical and medical laboratory use; antibiotics; medicines for treating the central nervous system; medicines for treating heart and circulation diseases; medicines for treating the respiratory system; medicines for urological treatment; medicines for treatment of digestive organs and corresponding/adjoining glands; hormones; vitamins; immunosuppressive, anti-inflammatory, and antiallergic medicines; dermatological, ophtalmological and otological medicines; in-vivo and in-vitro diagnostic preparations for clinical or medical purposes and clinical or medical laboratory use; antibodies, namely mono- and polyclonal antibodies for use in in-vivo clinical and medical diagnostics and for patient therapy; in vitro diagnostic agents for medical purposes, especially for determination of proteins, such as antibodies, monoclonal antibodies or immune globulins, or for determinations of nucleic acids, for blood group diagnostics and antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, and determination of toxic compounds; test kits comprising ready to use nutrient media for microorganisms, especially bacteria, and reagents for medical and laboratory uses, especially for blood group diagnostics, antibody determination, tissue typing, cell diagnostics, microbiological diagnostics, determination of toxic substances; test kits comprising monoclonal and polyclonal antibodies and natural and recombinant antigenes, for tests on serological and immune genetic basis, and reagents therefore for human and veterinary medical laboratory purposes; immunoassays such as ELISA's, consisting of reagents, sera, monoclonal and polyclonal antibodies, natural and recombinant antigens, and microtiter plates, and reagents therefore for human and veterinary medical laboratory purposes; diagnostic preparations for human or veterinary medical uses in the treatment of infections; media for bacteriological cultures, namely ready-to-use culture media and nutrient media and ingredients thereof;

c) International Class 009: plates and multiwell microtiter plates for cell typing, blood and virus diagnostics; blood warmers; apparatus namely incubator, cell sorter, cell counter, shaker, pipettes, plates and vials for cell recovery and for handling of cells, including disposable materials; measuring and surveying apparatus namely sample holder, reader, photometer, centrifuge, shaker, incubator, washer, particle counter and air sampler for removal, determination and quantification of microorganisms in air, liquids and on surfaces; measuring and surveying kits/systems and agar strips for determination and quantification of substances, namely blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for sanitary and hygiene monitoring, laboratory robot, for automated

processing of microtiter plate based assays like ELISAs, DNA hybridization assays and cell agglutination tests; kits/systems comprising agar strips, air samplers, particle counters, anemometers and agar strips for determination of air borne germs and for determination of particle size and number in air; kits/systems comprising air samplers, sample holders and reader for clean room air monitoring; all the foregoing for use in research and/or non-medical laboratories; and

d) International class 010: medical, apparatus for clinical or diagnostic use, namely apparatus for serological blood typing, blood grouping or serological detection of blood groups; bottles and containers specially designated for storage and conservation of solutions for transfusions and infusions; transfusion and infusion apparatus and devices, namely containers, syringes, catheters, transdermal delivery systems comprising blood warmers and plasma for clinical use; apparatus for cell recovery and for handling of cells, including disposable materials namely plates, spatula, vials, pipette tips and beakers for clinical or diagnostic use; measuring and surveying apparatus for clinical and diagnostic use namely sample holder, reader, photometer, dipsticks, teststrips, and agar strips for determination and quantification of substances, especially blood sugar, blood and respiratory alcohol, toxic substances, oxygen and blood constituents such as hemoglobin; plates and multiwell microtiter plates for cell typing, blood and virus diagnostics for clinical and diagnostic use; all of the foregoing for medical, clinical, diagnostic and/or surgical use (hereinafter "Opposer's Registration").

5. Opposer also holds International Registration No. 372,700, filed on May 23, 1969 and registered on September 21, 1970 (in Germany, Austria, Bosnia and Herzegovina, Belgium, the Netherlands, Luxemburg, Czech Republic, Algeria, France, Croatia, Italy, Lichtenstein, Morocco, Portugal, Romania, Slovenia, Slovakia, Vietnam, and Serbia & Montenegro) for **BIOTEST** for:

a) International Class 001: chemicals for science, namely reactive intended for chemical-medical goals, including the diagnostic goals; chemicals for industry, namely stabilizing for diagnostic and pharmaceutical preparations, culture media for cellular fabrics;

b) International Class 003: preparations of washing being used for cleaning of medical instruments;

c) International Class 005: reagents intended for diagnostic goals; pharmaceutical products, namely blood, components of blood (in particular érythrocytes,

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