

ESTTA Tracking number: **ESTTA359012**

Filing date: **07/20/2010**

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	ICU MEDICAL, INC.
Granted to Date of previous extension	07/21/2010
Address	951 Calle Amanecer San Clemente, CA 92673 UNITED STATES

Attorney information	Steven J. Nataupsky Knobbe, Martens, Olson & Bear, LLP 2040 Main Street 14th Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com Phone:9497600404
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Applicant Information

Application No	77691837	Publication date	03/23/2010
Opposition Filing Date	07/20/2010	Opposition Period Ends	07/21/2010
Applicant	RyMed Technologies, Inc. 137 Third Avenue North Franklin, TN 37064 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: Medical devices, namely, intravenous connectors
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Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
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Related Proceedings	Oppositions filed against applications for the marks ABSOLUTE NEUTRAL (77/691774), NEUTRAL BENEFIT (77/691816), NEUTRAL STANDARD (77/691760), NEUTRAL INTEGRITY (77/691752), NEUTRAL EDGE (77/691746) and NEUTRAL ADVANTAGE (77/691731)
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Attachments	ICUMM 426M.pdf (31 pages)(2708322 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 First Class Mail on this date.

Signature	/gregory phillips/
Name	Gregory B. Phillips
Date	07/20/2010

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

ICU Medical, Inc.,
a Delaware corporation,

Opposer,

v.

RyMed Technologies, Inc.,
a Delaware corporation,

Applicant.

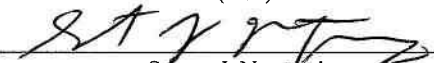
Application No. 77/691,837

Opposition No. _____

I hereby certify that this correspondence and all marked attachments are being transmitted by electronic mail to the United States Patent and Trademark Office at <http://www.uspto.gov> on

July 20, 2010

(Date)


Steven J. Nataupsky

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

ICU Medical, Inc., a Delaware corporation, located and doing business at 951 Calle Amanecer, San Clemente, California 92673 ("Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 77/691,837 ("Application"), and hereby opposes the same.

A description of the Application is as follows:

Mark: NEUTRAL CHOICE

Serial No.: 77/691,837

Filing Date: March 16, 2009

Publication Date: March 23, 2010

Goods: Medical devices, namely, intravenous connectors in International Class 10

Owner: RyMed Technologies, Inc. (“Applicant”)

As grounds for opposition, it is alleged that:

1. Opposer and Applicant are competitors in connection with the sale of medical devices.

2. Since at least as early as 1987, Opposer has been involved in the manufacture and sale of medical devices, including intravenous connectors, which goods are identical to the goods set forth in the Application.

3. Opposer manufactures and sells a variety of intravenous connectors, including neutral intravenous connectors. An intravenous connector that is neutral means that there is no, or virtually no, reflux of blood into the catheter lumen either when medical personnel connect or disconnect an intravenous fluid administration device.

4. On April 22, 2009, in a dispute between Applicant and Opposer, the United States District Court, Central District of California, found that the terms “neutral” and “neutral displacement” are generic when used in connection with intravenous connectors. A copy of the Court’s decision is attached as Exhibit A.

5. Consistent with the April 22, 2009 decision, on October 8, 2009, the Court issued an Order cancelling Applicant’s registrations for the purported marks NEUTRAL and NEUTRAL DISPLACEMENT. A copy of the Order is attached as Exhibit B.

6. The term “choice” is defined as “the best or most preferable part.” A printout of the online American Heritage Dictionary definition for the term “choice” is attached as Exhibit C. Applicant’s mark uses the term “choice” to immediately convey to consumers that a “neutral” intravenous connector is the best option. Laudatory terms, those which attribute quality or

excellence to goods or services, are merely descriptive pursuant to section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1). The term “choice” is a laudatory term and accordingly, is merely descriptive.

7. The term “neutral choice” immediately describes a function, feature or characteristic of the goods marketed by Applicant.

8. Applicant’s alleged mark NEUTRAL CHOICE is comprised of the generic term “neutral” and the laudatory, merely descriptive term “choice.” Thus, the alleged mark NEUTRAL CHOICE is merely descriptive of the goods set forth in the Application and is not entitled to registration pursuant to section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1).


9. Applicant’s alleged mark is integral to the accurate and efficient description of Opposer’s products, and if a registration is granted to Applicant, it will impair Opposer’s right to use the term “neutral choice” descriptively. Opposer will therefore be damaged by the inability to use the term “neutral choice” on goods that are similar to those listed in the Application.

WHEREFORE, Opposer prays that Application Serial No. 77/691,837 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 20, 2010

By: 

Steven J. Nataupsky
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Gregory B. Phillips
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