

ESTTA Tracking number: **ESTTA359019**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

**Applicant Information**

Application No	77691731	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
--

**Grounds for Opposition**

The mark is merely descriptive	Trademark Act section 2(e)(1)
Related Proceedings	Oppositions filed against applications for the marks ABSOLUTE NEUTRAL (77/691774), NEUTRAL BENEFIT (77/691816), NEUTRAL CHOICE (77/691837), NEUTRAL STANDARD (77/691760), NEUTRAL INTEGRITY (77/691752) and NEUTRAL EDGE (77/691746)
Attachments	ICUMM 430M.pdf ( 31 pages )(2741751 bytes )

**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. 77/691,731

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. 77/691,731 ("Application"), and hereby opposes the same.

A description of the Application is as follows:

Mark: NEUTRAL ADVANTAGE

Serial No.: 77/691,731

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 "advantage" is defined as "superiority of position or condition." A printout of the Merriam-Webster online dictionary definition for the term "advantage" is attached as Exhibit C. Applicant's mark uses the term "advantage" to immediately convey to consumers that a "neutral" intravenous connector is the superior 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 “advantage” is a laudatory term and accordingly, is merely descriptive.

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

8. Applicant’s alleged mark NEUTRAL ADVANTAGE is comprised of the generic term “neutral” and the laudatory, merely descriptive term “advantage.” Thus, the alleged mark NEUTRAL ADVANTAGE 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).

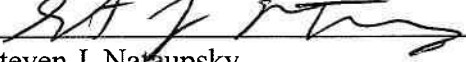
9. Applicant’s alleged mark is integral to the accurate and efficient description of Opposer’s products, and if a registration is granted to Applicant, it will impair Opposer’s right to use the term “neutral advantage” descriptively. Opposer will therefore be damaged by the inability to use the term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

WHEREFORE, Opposer prays that Application Serial No. 77/691,731 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  
Christopher L. Ross  
Gregory B. Phillips  
2040 Main Street  
Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.