

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CYTONOME/ST, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 19-301 (RGA)
	)	
NANOCELECT BIOMEDICAL, INC.,	)	<b>CONFIDENTIAL --</b>
	)	<b>ATTORNEYS' EYES ONLY</b>
Defendant.	)	

**CYTONOME'S  
INITIAL INFRINGEMENT CLAIM CHARTS**

Pursuant to the Court's Scheduling Order (D.I. 15), Plaintiff Cytonome/ST, LLC ("Cytonome") hereby provides its Initial Infringement Claim Charts for the Asserted Claims to Defendant NanoCollect Biomedical, Inc. ("NanoCollect"), attached hereto as Exhibits A through G.

**PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS**

1. This disclosure is directed to infringement issues only and does not address validity, enforceability, willfulness or claim construction issues, which have been or will be addressed elsewhere. Cytonome reserves all rights with respect to such issues.

2. The term "Asserted Claims" refers to:

- Claims 1–4, 7–11, 13, 17–26 of U.S. Patent No. 6,877,528 (the "528 Patent");
- Claims 1–18 of U.S. Patent No. 8,623,295 (the "295 Patent");
- Claims 1–19 of U.S. Patent No. 9,011,797 (the "797 Patent");
- Claims 1–12 of U.S. Patent No. 9,339,850 (the "850 Patent");
- Claims 1, 2, 5–8, 12–21 of U.S. Patent No. 10,029,263 (the "263 Patent");
- Claims 1, 2, 4–6, 11 of U.S. Patent No. 10,029,283 (the "283 Patent"); and
- Claims 1, 10–12, 15, 17 of U.S. Patent No. 10,065,188 (the "188 Patent").

3. The term “Accused Products,” as used herein and in the claim chart below, refers to all versions of Defendant NanoCollect Biomedical, Inc.’s “Wolf Cell Sorter” product, and the use thereof. The identification of the Accused Products is based on information currently available to Cytonome. Cytonome reserves its right to supplement and/or amend its list of Accused Products as additional information becomes available through discovery. Cytonome contends that NanoCollect directly infringes the Asserted Claims by making, using, selling, offering to sell, and/or importing the Accused Products.

4. Cytonome’s Initial Infringement Claim Charts, attached hereto, are based on Cytonome’s current knowledge, understanding, and belief as to the facts and information available as of the date of these Initial Infringement Claim Charts. Cytonome has not completed its investigation, discovery, or analysis of information related to this action. Accordingly, Cytonome reserves the right to supplement or otherwise amend its Initial Infringement Claim Charts as discovery progresses in this action and Cytonome learns, for example, of any new facts or information relating to NanoCollect’s conduct and products.

5. Any infringement analysis ultimately depends, at least in part, on claim construction, which is a question of law for the Court. The Asserted Claims have not yet been construed by the Court, and accordingly, Cytonome has not had an opportunity to compare the construction of the Asserted Claims with the Accused Products. Cytonome reserves the right to amend, supplement and/or materially modify its Initial Infringement Claim Charts after the Court has construed the claims.

6. As stated in Cytonome’s Initial Infringement Claim Charts, attached hereto, Cytonome asserts that every limitation of each Asserted Claims is literally present in the Accused Products. To the extent the Asserted Claims are deemed not to be literally infringed, the

Asserted Claims are infringed under the doctrine of equivalents, as any differences between the Accused Products and the Asserted Claims would be insubstantial, including, for example, because the Accused Products perform substantially the same function, in substantially the same way, to achieve substantially the same result as the materials claimed in the Asserted Claims.

7. The citations in the attached Initial Infringement Claim Charts are representative of the evidence supporting Cytonome's contentions, but are not intended to be exhaustive. Cytonome reserves the right to rely on additional evidence showing the same or similar substance to the evidence cited herein, and also reserves the right to rely on additional written discovery, deposition testimony, and/or documents produced after the service of these Initial Infringement Claim Charts. Cytonome further reserves the right to produce and rely upon additional evidence supporting infringement during expert discovery.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Rodger D. Smith II*

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