


Form PTO-1595 (Rev. 09/04)  
OMB No. 0651-0027 (exp. 6/30/2005)

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

### RECORDATION FORM COVER SHEET PATENTS ONLY

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

<p><b>1. Name of conveying party(ies)/Execution Date(s):</b> NOVUSPHARMA S.P.A.</p> <p>Execution Date(s): <u>June 16, 2003</u></p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>3. Nature of Conveyance:</b></p> <p><input type="checkbox"/> Assignment <input checked="" type="checkbox"/> Merger  <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name  <input type="checkbox"/> Government Interest Assignment  <input type="checkbox"/> Executive Order 9424, Confirmatory License  <input type="checkbox"/> Other _____</p>	<p><b>2. Name and address of receiving party(ies)</b></p> <p>Name: <u>CELL THERAPEUTICS, INC.</u></p> <p>Internal Address: _____</p> <p>Street Address: _____</p> <p><u>501 ELLIOT AVENUE WEST, SUITE 400</u></p> <p>City: <u>SEATTLE</u></p> <p>State: <u>WASHINGTON</u></p> <p>Country: <u>USA</u> Zip: <u>98119</u></p> <p>Additional name(s) &amp; address(es) attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>4. Application or patent number(s):</b></p> <p>A. Patent Application No.(s) <u>11/283,941</u></p> <p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p><input type="checkbox"/> This document is being filed together with a new application.</p> <p>B. Patent No.(s)</p>
<p><b>5. Name and address to whom correspondence concerning document should be mailed:</b></p> <p>Name: <u>Kelly Y. Hwang</u> <u>LERNER, DAVID, LITTENBERG,</u> <u>KRUMHOLZ &amp; MENTLIK, LLP</u></p> <p>Internal Address: <u>Atty. Dkt.: CELLTH 3.3-010 CON</u></p> <p>Street Address: <u>600 South Avenue West</u></p> <p>City: <u>Westfield</u></p> <p>State: <u>NJ</u> Zip: <u>07090</u></p> <p>Phone Number: <u>(908) 654-5000</u></p> <p>Fax Number: <u>(908) 654-0415</u></p> <p>Email Address: <u>khwang@ldlkm.com</u></p>	<p><b>6. Total number of applications and patents involved:</b> <span style="border: 1px solid black; padding: 2px 10px;">1</span></p> <p><b>7. Total fee (37 CFR 1.21(h) &amp; 3.41) \$ <u>40.00</u></b></p> <p><input type="checkbox"/> Authorized to be charged by credit card  <input checked="" type="checkbox"/> Authorized to be charged to deposit account  <input type="checkbox"/> Enclosed  <input type="checkbox"/> None required (government interest not affecting title)</p> <p><b>8. Payment Information</b></p> <p>a. Credit Card Last 4 Numbers _____ Expiration Date _____</p> <p>b. Deposit Account Number <u>12-1095</u> Authorized User Name <u>Kelly Y. Hwang</u></p>
<p><b>9. Signature:</b></p> <p style="text-align: center;"> Signature</p> <p style="text-align: right;"><u>January 30, 2006</u> Date</p> <p><u>Kelly Y. Hwang - 51,831</u> Name of Person Signing</p> <p style="text-align: right;">Total number of pages including cover sheet, attachments, and documents: <span style="border: 1px solid black; padding: 2px 10px;">13</span></p>	

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Agreement and Plan of Merger

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EX-2.1 3 dex21.htm AGREEMENT AND PLAN OF MERGER

EXHIBIT 2.1

EXECUTION COPY

**AGREEMENT AND PLAN OF MERGER**

**BY AND BETWEEN**

**CELL THERAPEUTICS, INC.**

**AND**

**NOVUSPHARMA, S.p.A.**

**DATED**

**AS OF**

**JUNE 16, 2003**

G. For Italian income tax purposes, it is intended that the Merger shall constitute a tax-neutral transaction for Novuspharma and for holders of Novuspharma Ordinary Shares resident in Italy, except for transfers made pursuant to Section 1.9 or 1.10 below. It is understood that (i) CTI shall establish an Italian Branch, qualifying as a permanent establishment for Italian tax purposes (the "Italian Branch"), prior to the Closing (as defined in Section 1.2 below) and appoint an Italian legal representative ("*Institore*"), (ii) at the Effective Time (as defined in Section 1.3 below) the assets (or a portion thereof) of the Surviving Corporation that were owned by Novuspharma immediately prior to the Effective Time shall be attributed to the Italian Branch, and (iii) within one hundred twenty (120) days after the Effective Time, CTI shall cause the assets (or a portion thereof) of the Italian Branch to be contributed to a wholly-owned subsidiary of the Surviving Corporation in the form of a S.r.l. (the "Italian Subsidiary") in exchange for all of the quotas of capital stock of the Italian Subsidiary.

H. As a condition and inducement to Novuspharma's willingness to enter into this Agreement, the parties agree that, (i) as of the Effective Time, the individuals set forth on Schedule G attached hereto shall become directors of the Surviving Corporation (as defined in Section 1.1 below), and (ii) upon the contribution of the assets (or a portion thereof) of the Italian Branch to the Italian Subsidiary, the directors of the Italian Subsidiary shall be as set forth on Schedule H attached hereto.

I. Concurrently with the execution and delivery of this Agreement, the parties shall announce the Merger to the public and to the relevant securities authorities in compliance with Applicable Laws (as defined in Section 2.4).

J. CTI and Novuspharma desire to make certain representations, warranties, covenants and agreements in connection with the Merger and the other transactions contemplated by this Agreement and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, agree as follows:

## ARTICLE I

### THE MERGER

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the WBCA and Italian Law, Novuspharma shall be merged with and into CTI at the Effective Time. Following the Merger, the separate corporate existence of Novuspharma shall cease and CTI shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all of the rights and obligations as well as the assets and liabilities of Novuspharma in accordance with the WBCA and Italian Law.

1.2 Closing. The Closing of the Merger shall take place at a date and time to be agreed between the parties, which shall be no later than the fifth business day after satisfaction or waiver by the relevant party or parties of the last of the conditions set forth in Article VI (the "Closing Date"), at the offices of Studio Notarile Marchetti, Via Agnello 18, Milan, Italy, before the Italian notary public, Mr. Piergaetano Marchetti or any other notary public of his office (the "Italian Notary Public"), unless another Italian notary public, time, date or place is mutually agreed upon in writing by the parties hereto. For purposes of this Agreement, the

## Agreement and Plan of Merger

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"Closing" shall mean the execution and delivery of all relevant legal and contractual documentation required hereunder and under each of the WBCA and Italian Law to properly consummate the Merger, including the merger deed, drafted in the Italian language and signed by the parties before the Italian Notary Public (together with an English translation thereof approved, and reasonably accepted and countersigned by the parties, (the "Merger Deed")).

1.3 Effective Time. Subject to the provisions of this Agreement, as soon as practicable on or after the Closing, the parties shall file (a) appropriate Articles of Merger with the Secretary of State of Washington in accordance with Chapter 23B.11.050 and any other relevant provisions of the WBCA (the "Articles of Merger") and (b) the Merger Deed with the Companies' Register in Milan, Italy. The parties shall make all other filings and recordings required by the WBCA and Italian Law in connection with the Merger. The Merger shall become effective immediately prior to the first trading date on the Nuovo Mercato of the shares of CTI Common Stock, or at such other time as CTI and Novuspharma shall agree should be specified in the Articles of Merger, the Merger Deed or other appropriate documents (such date and time, or such other date or time as may be set forth therein, being the "Effective Time"). The parties intend that the Effective Time shall be as soon as practicable after the later to occur of (x) the filing of the Articles of Merger with the Secretary of State of Washington and (y) the recording of the Merger Deed or other appropriate documents on the Companies' Register in Milan, Italy. The accounting and fiscal effects of the Merger shall take place as of the Effective Time.

1.4 Effects of the Merger. The Merger shall have the effects set forth in the applicable provisions of the WBCA and Italian Law, including, without limiting the generality of the foregoing and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of Novuspharma shall vest in the Surviving Corporation and all debts, liabilities and duties of Novuspharma shall become the debts, liabilities and duties of the Surviving Corporation.

1.5 Articles of Incorporation and Bylaws. At the Effective Time, the Articles of Incorporation and Bylaws of the Surviving Corporation shall be as set forth in Exhibit D and Exhibit E attached hereto (which shall also be attached to the Merger Plan), until thereafter changed or amended as provided therein or by Applicable Laws.

1.6 Directors; Operations following the Merger.

(a) The Board of Directors of CTI shall take all actions necessary such that effective as of immediately following the Effective Time, the Board of Directors shall be as set forth in Schedule F attached hereto until the earlier of the resignation or removal of any individual listed on Schedule F attached hereto or designated in accordance with this Section 1.6(a) or until their respective successors are duly elected and qualified, as the case may be, in the manner provided in the Articles of Incorporation and Bylaws of the Surviving Corporation, or as otherwise provided by law. The Board of Directors of the Surviving Corporation shall be classified at Closing with approximately one-third of the members of the Board elected each year, and each Board member's class designation shall be as set forth in Schedule F attached hereto.

(b) At the Effective Time, the Institore of the Italian Branch shall be as set forth in Schedule I attached hereto until the earlier of such Italian Branch Manager's resignation or removal or until such Italian Branch Manager's respective successor is duly elected and qualified, as the case may be, in the manner provided in the Articles of Incorporation and Bylaws of the Surviving Corporation, and the Institore shall have the powers

Novuspharma, any officer, or employee of Novuspharma has been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 35a(a) or any similar EU or Italian law or regulation, or for which debarment is authorized by 21 U.S.C. § 55a(b) or any similar EU or Italian law or regulation.

(k) Novuspharma has made available to CTI and its counsel copies of any and all material written correspondence between Novuspharma and any Regulatory Agencies within the last three (3) years.

(l) Except as set forth on Schedule 2.12(l) of the Novuspharma Disclosure Schedules, at no time has Novuspharma, any person on behalf of Novuspharma, or any Regulatory Agency suspended, or, to Novuspharma's knowledge, threatened in writing to suspend, clinical trials of any of Novuspharma's product candidates based upon the exposure, or potential exposure, of participants in the clinical trials to unacceptable health risks or otherwise.

(m) Except as set forth on Schedules 2.12(m) of the Novuspharma Disclosure Schedules, Novuspharma has not received any written notice that a Regulatory Agency has commenced or threatened in writing to initiate (i) any action to withdraw its approval or request the recall of any product of Novuspharma, (ii) any action to enjoin (A) any production at any facility owned or used by Novuspharma, or any person on behalf of Novuspharma, or (B) any facility (including any clinical facility where testing and/or trials occur) owned or used by Novuspharma, and of any person on behalf of Novuspharma, (iii) the withdrawal of approval of any product application (including, any IND), or (iv) any material civil penalty, injunction, seizure or criminal action.

(n) As to each product application (including, any IND) submitted to, but not approved by, the applicable Regulatory Agency, and not withdrawn by Novuspharma or applicants acting on its behalf as of the date of this Agreement, Novuspharma has, and to the knowledge of Novuspharma applicants acting on its behalf have, complied in all material respects with the applicable Italian or, United States, or EU or other foreign regulatory requirements, (including, without limitation, of the FDCA and implementing FDA regulations), as the case may be, and has provided all additional information and taken all additional action that has been deemed appropriate by Novuspharma in connection with such application.

(o) The clinical, pre-clinical, safety and other studies and tests conducted by or on behalf of or sponsored by Novuspharma were and, if still pending, are being conducted in material compliance with standard medical and scientific research procedures. Novuspharma has not received any written notices or other written correspondence from the FDA or any other Governmental Entity requiring the termination, suspension or modification of any clinical, pre-clinical, safety or other tests.

### 2.13 Intellectual Property.

(a) Except as set forth on Schedule 2.13(a) of the Novuspharma Disclosure Schedules, to Novuspharma's knowledge, Novuspharma owns or has a valid right to use under applicable Italian, United States or foreign laws, as the case may be all: (i) patents (including any applications therefor, and all reissues, divisions, re-examinations, renewals, extensions, continuations, and continuations in-part, collectively, "Patents"); (ii) inventions (whether patented or not), data and technology; (iii) works of authorship, software and copyrights (including any applications or registrations therefor); (iv) industrial designs,

trademarks (and all associated goodwill), and internet addresses and domain names (including any applications and registrations for any of the foregoing); (v) trade secrets and other confidential information, know-how, proprietary processes, formulae, algorithms, models, and methodologies (collectively, "Trade Secrets"); and (vi) any similar or equivalent rights anywhere in the world (all of the foregoing (i) to (vi), "Intellectual Property"), used in or necessary for the conduct of the business of Novuspharma as currently conducted (the "Novuspharma Intellectual Property").

(b) Schedule 2.13(b) of the Novuspharma Disclosure Schedules sets forth a true, correct and complete list of all Patents that are owned or co-owned or exclusively licensed from a third party by Novuspharma including, without limitation, Patents for industrial inventions regarding molecules and/or technologies related to products existing or currently under development by Novuspharma, or related to Novuspharma's compounds.

(c) Schedule 2.13(c) of the Novuspharma Disclosure Schedules sets forth a true, correct and complete list of all material license agreements to which Novuspharma is a party or is otherwise bound, granting any right to use or practice any Intellectual Property rights, whether Novuspharma is the licensee or licensor thereunder, and any written settlements relating to any Intellectual Property to which Novuspharma is a party or is otherwise bound (collectively, the "Novuspharma License Agreements"), indicating for each the title, the parties, date executed and the Intellectual Property covered thereby. The Novuspharma License Agreements in which Novuspharma is the licensee, constitute all of the material licenses used by Novuspharma in connection with its business.

(d) Except as set forth in Schedule 2.13(d) of the Novuspharma Disclosure Schedules, Novuspharma has not licensed or sublicensed its rights in any material Intellectual Property, except pursuant to the Novuspharma License Agreements, and no royalties, honoraria or other fees are payable by Novuspharma for the use of or right to use any third party Intellectual Property, except pursuant to the Novuspharma License Agreements or non-exclusive end user agreements for commercially available software.

(e) The Intellectual Property owned by Novuspharma is free and clear of all Liens, and Novuspharma is listed in the records of the appropriate Italian and/or United States and/or other foreign agency as the sole owner of record for each patent and patent application listed in Schedule 2.13(b) of the Novuspharma Disclosure Schedules (except for those patents or patent applications designated on Schedule 2.13(b) of the Novuspharma Disclosure Schedules as jointly owned or exclusively licensed from a third party).

(f) Except as set forth on Schedule 2.13(f) of the Novuspharma Disclosure Schedules, to Novuspharma's knowledge, the Patents listed on Schedule 2.13(b) of the Novuspharma Disclosure Schedules are valid, enforceable and subsisting, in full force and effect, and have not expired or been cancelled or abandoned. To Novuspharma's knowledge, there is no pending or threatened nullification, revocation, opposition, interference or cancellation proceedings involving the Patents listed on Schedule 2.13(b) of the Novuspharma Disclosure Schedules. Except as set forth on Schedule 2.13(f) of the Novuspharma Disclosure Schedules, to Novuspharma's knowledge, there is no prior art or circumstances that would render any of the Patents listed on Schedule 2.13(b) of the Novuspharma Disclosure Schedules invalid or unenforceable.

(g) Novuspharma has not received any written notice asserting infringement or misappropriation of any Intellectual Property rights of others nor has it received

any written notice asserting the invalidity or unenforceability of any Novuspharma Intellectual Property. No person has notified Novuspharma in writing that it is claiming any ownership of or right to use any Novuspharma Intellectual Property, other than pursuant to the Novuspharma License Agreements. No person, to the knowledge of Novuspharma, is infringing upon or misappropriating any Intellectual Property rights owned or licensed by Novuspharma. Except as set forth on Schedule 2.13(g) of the Novuspharma Disclosure Schedules, to Novuspharma's knowledge, the conduct of the business of Novuspharma as currently conducted does not conflict with, infringe upon, misappropriate or otherwise violate the valid Intellectual Property rights of any third party. To Novuspharma's knowledge, no action has been instituted against Novuspharma that is presently outstanding alleging that Novuspharma infringes upon, misappropriates or otherwise violates any rights of a third party in or to Intellectual Property. Novuspharma has no knowledge that the claims of any Patent owned or exclusively licensed from a third party by Novuspharma has been previously submitted to any patent office by another party or parties who have priority rights with respect to such Patent.

(h) Except as set forth on Schedule 2.13(h) of the Novuspharma Disclosure Schedules, to Novuspharma's knowledge, all present and former employees and consultants of Novuspharma have executed a written invention assignment or consulting agreement pursuant to which such employee or consultant has assigned to Novuspharma all Intellectual Property rights arising out of the employment or consulting relationship with Novuspharma.

(i) Except as set forth on Schedule 2.13(i) of the Novuspharma Disclosure Schedules, the transactions contemplated by this Agreement will not result in (i) the loss or material impairment of the Surviving Corporation's rights to any Novuspharma Intellectual Property; (ii) the Surviving Corporation being bound by any material non-compete, exclusivity obligation or other restriction on the operation of the business, the products, or the Intellectual Property rights of the Surviving Corporation (except to the same extent affecting specific Novuspharma Intellectual Property rights immediately prior to the Merger); or (iii) the Surviving Corporation granting any rights to any Intellectual Property to a third party (except to the same extent affecting specific Novuspharma Intellectual Property rights immediately prior to the Merger).

**2.14 Agreements with Employees: Labor Disputes.** Schedule 2.14 of the Novuspharma Disclosure Schedules lists all labor union and collective bargaining agreements (or agreements in the nature thereof) between Novuspharma and its employees in effect as of the date hereof. Except as set forth on Schedule 2.14 of the Novuspharma Disclosure Schedules, (i) there is no labor strike, work stoppage or other labor dispute or unrest, pending or threatened in writing by any employee of Novuspharma that, individually or in the aggregate, would be reasonably likely to have a material adverse effect on Novuspharma, and (ii) there are no asserted or threatened claims made against Novuspharma by any employees or other individuals, or labor, administrative, social security, pension or insurance authorities, related to discrimination, harassment, wrongful termination, unpaid benefits (including, without limitation, severance) or otherwise, without limitation, that, individually or in the aggregate, would be reasonably likely to have a material adverse effect on Novuspharma. Novuspharma has complied in all respects with all relevant applicable Italian national and company collective bargaining agreements and the individual terms and conditions of employment or service agreements with respect to each of its employees (and each of its former employees and independent contractors or consultants), except where the failure to be in such compliance would not, individually or in the aggregate, have a material adverse effect on Novuspharma. To

**IN WITNESS WHEREOF**, Cell Therapeutics, Inc. and Novuspharma S.p.A. have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

"CTI"

CELL THERAPEUTICS, INC.,  
a Washington corporation

By: \_\_\_\_\_

*James A. Bianco*  
James A. Bianco  
President and Chief Executive Officer

"NOVUSPHARMA"

NOVUSPHARMA S.P.A.,  
an Italian joint stock company

By: \_\_\_\_\_

Silvano Spinelli  
Chief Executive Officer

[SIGNATURE PAGE TO MERGER AGREEMENT]



**IN WITNESS WHEREOF**, CTI and Novuspharma have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

**CELL THERAPEUTICS, INC.,**  
a Washington corporation

By: \_\_\_\_\_  
James A. Bianco  
President and Chief Executive Officer

**NOVUSPHARMA, S.P.A.,**  
an Italian joint stock company

By:   
Silvano Spinelli  
Chief Executive Officer

[SIGNATURE PAGE TO MERGER AGREEMENT]

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 1, 2004

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**CELL THERAPEUTICS, INC.**

(Exact name of Registrant as specified in its charter)

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**Washington**  
(State or other jurisdiction of incorporation or  
organization)

**0-28386**  
(Commission File Number)

**91-1533912**  
(I.R.S. Employer  
Identification Number)

**501 Elliott Avenue West, Suite 400**  
**Seattle, WA 98119**  
(Address of principal executive offices) (Zip Code)

**(206) 282-7100**  
(Registrant's telephone number, including area code)

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**Not Applicable**  
(Former name or former address, if changed since last report)

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**Item 2. Acquisition or Disposition of Assets**

Effective January 1, 2004, pursuant to the Agreement and Plan of Merger entered into as of June 16, 2003 (as amended, the "Merger Agreement") between Cell Therapeutics, Inc. ("CTI") and Novuspharma S.p.A. ("Novuspharma"), Novuspharma was merged with and into CTI, with CTI continuing as the surviving corporation (the "Merger"). Pursuant to the Merger Agreement and as a result of the Merger, CTI issued approximately 15.6 million new shares of CTI common stock as consideration for the approximately 6.4 million Novuspharma ordinary shares outstanding on January 1, 2004. Holders of Novuspharma ordinary shares received 2.45 shares of CTI common stock for each outstanding Novuspharma ordinary share.

The issuance of shares of CTI common stock under the Merger Agreement as described above was registered under the Securities Act of 1933, as amended, pursuant to CTI's registration statement on Form S-4 (File No. 333-106906) filed with the Securities and Exchange Commission ("SEC") on July 9, 2003, as amended on August 21, 2003, and as declared effective on September 18, 2003 (as amended, the "Registration Statement"). The Registration Statement included CTI's proxy statement/prospectus, which contains additional information about the Merger.

The foregoing description of the Merger and the Merger Agreement is qualified in its entirety by reference to the Merger Agreement, which is included as Exhibit 2.1 to this report, and is incorporated herein by reference. In addition, the press release that CTI issued on January 2, 2004, relating to the consummation of the Merger with Novuspharma is attached to this report as Exhibit 99.1 and is incorporated herein by reference.

**Item 7. Financial Statements and Exhibits****(a) Financial statements of businesses acquired:**

In accordance with Item 7(a)(4) of Form 8-K, the financial statements required by Item 7(a) will be filed by amendment to this Form 8-K no later than March 15, 2004.

**(b) Pro forma financial information:**

In accordance with Item 7(b)(2) of Form 8-K, the pro forma financial information required by Item 7(b) will be filed by amendment to this Form 8-K no later than March 15, 2004.

**(c)**

<u>Exhibit</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of June 16, 2003, between Cell Therapeutics, Inc. and Novuspharma S.p.A. (Incorporated by reference to Cell Therapeutics, Inc.'s Current Report on Form 8-K filed with the SEC on June 17, 2003)
99.1	Press release issued on January 2, 2004.

FORM 8-K

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CELL THERAPEUTICS, INC.  
a Washington corporation

January 13, 2004

By: /s/ JAMES A. BIANCO

James A. Bianco, M.D.  
*President and Chief Executive Officer*

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**Exhibit Index**

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