

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

In the matter of: :
: :
Application Serial No. 78/235,715 :
: :
Filed: April 9, 2003 :
: :
Applicant: Medi-Physics, Inc. :
: :
Trademark: INSPIRUS :
: :
Published: April 6, 2004 :
: :

INSPIRE PHARMACEUTICALS, INC., :
: :
Opposer, :
: :
v. :
: :
MEDI-PHYSICS, INC. :
: :
Applicant. :
: :

Opposition No.

Pittsburgh, Pennsylvania
June 4, 2004

NOTICE OF OPPOSITION

Opposer, INSPIRE PHARMACEUTICALS, INC., a Delaware corporation, having its principal place of business at 4222 Emperor Boulevard, Suite 470, Durham, North Carolina, 27703-8466 (hereinafter referred to as "Opposer") believes that it will be damaged by the registration

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on June 4, 2004.

Helen Gerace
(Name of Person Mailing Paper)

Helen Gerace June 4, 2004
Signature Date

06/10/2004 KGIBBONS 00000027 78235715

01 FC:6402

600.00 DP

of the mark shown in Application Serial No. 78/235,715, filed April 9, 2003, for 1) implantable radiation therapy preparations consisting of encapsulated radioisotope brachytherapy sources and 2) radiation therapy and imaging devices and equipment, namely, implantable radiation therapy devices consisting of encapsulated radioisotope brachytherapy sources, and radiation therapy delivery systems consisting primarily of radioactive seeds and a bio-absorbable medium; needles for medical purposes; suture needles; and parts and fittings for the aforesaid goods, in International Classes 005 and 010 and hereby opposes the same.

The specific grounds for opposition are as follows:

1. Opposer is a corporation existing under the laws of the State of Delaware, is located at Durham, North Carolina and is doing business at Durham and elsewhere throughout the United States.

2. Opposer is engaged in the field of pharmaceuticals and medical services and devices, including diagnosis and treatment of conditions of the upper and lower respiratory tract and other epithelial surfaces using pharmaceuticals, medical devices, assays and computer software and models.

3. Over the years, Opposer's pharmaceuticals and medical services sold under its mark have gained major recognition and wide acceptance in the pharmaceuticals field of medicine, for quality services and good value.

4. Opposer is the owner of the corporate and trade name, Inspire Pharmaceuticals, Inc. and United States Service Mark Registration No. 2,117,424 issued on December 2, 1997 for "INSPIRE PHARMACEUTICALS, INC." and Design; United States Service Mark Registration No. 2,578,526 issued on June 11, 2002 for "INSPIRE" and Design; United States Service Mark Registration No. 2,578,523 issued on June 11, 2002, for "INSPIRE"; U.S. Trademark Application Serial No. 76/308,923 filed September 4, 2001, as Intent-to-Use, for "INSPIRE" and

Design; and U.S. Trademark Application Serial No. 76/308,918 filed September 4, 2001, as Intent-to-Use, for "INSPIRE", collectively for goods and services in International Classes 5 and 42.

5. Opposer's goods and services sold under its marks are varied in nature and stage of development, and pertain to ophthalmic, respiratory, and cardiovascular pharmaceuticals, as well as oncologic diagnostics, and include without limitation dry eye, rhinitis and sinusitis pharmaceuticals, antithrombotic cardiovascular drugs, allergy medications, cystic fibrosis treatments, and medical devices.

6. Because of Opposer's extensive use of its trade name and trademarks, it has substantial goodwill which is an extremely valuable asset of Opposer and purchasers of such goods and services have come to associate INSPIRE with Opposer.

7. On information and belief based on the Application, Applicant, MEDI-PHYSICS, INC., is a Delaware corporation having a place of business at 101 Carnegie Center, Princeton, New Jersey, 08540-6231.

8. The Application was filed April 9, 2003, and seeks registration of INSPIRUS as a trademark for 1) implantable radiation therapy preparations consisting of encapsulated radioisotope brachytherapy sources and 2) radiation therapy and imaging devices and equipment, namely, implantable radiation therapy devices consisting of encapsulated radioisotope brachytherapy sources, and radiation therapy delivery systems consisting primarily of radioactive seeds and a bio-absorbable medium; needles for medical purposes; suture needles; and parts and fittings for the aforesaid goods, in International Classes 005 and 010.

9. Applicant's mark was published for opposition on April 6, 2004. On one occasion up to and including May 5, 2004, Opposer requested a thirty day extension of time within which to oppose up to and including June 5, 2004.

10. Applicant's use of INSPIRUS on or in connection with its medical devices relating to radiation therapy is likely to cause confusion or to cause mistake, or will deceive the public into believing that said medical devices relating to oncologic diagnostics emanate from Opposer and/or are licensed by Opposer and/or are approved by Opposer.

11. Because the dominant portion of each of the words "inspirus" and "inspire" have the same predominating "INSPIR" prefix, Applicant's mark INSPIRUS for medical devices is sufficiently similar to the mark INSPIRE for various medical devices so as to be likely to cause confusion as to the source of the goods and services.

12. If Applicant is permitted to register INSPIRUS, Applicant will be in a position to harass and annoy Opposer in offering its goods and services for sale to the public.

13. 15 U.S.C. § 1052(d) bars Applicant's mark from registration.

14. The mark of the opposed Application is confusingly and deceptively similar to Opposer's corporate name, trade name and previously registered and used INSPIRE marks as applied to the respective goods and services of the parties.

15. In view of the foregoing, Opposer believes, and therefore alleges, that use and registration of the mark herein opposed will damage Opposer for the reasons, among others: (a) that purchasers, users and persons in the trade in related professions will be confused as to the source or origin of the opposed goods and/or services in connection with which the marks are alleged to be used; and (b) that purchasers, users and persons in the trade in related professions will assume, contrary to the fact, that Applicant's opposed goods are associated with, endorsed by, or in some way related to or otherwise sponsored by or approved by Opposer.

17. Accordingly, Opposer will be damaged by registration of INSPIRUS to Applicant.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this opposition be sustained.

If this Notice of Opposition is found to be deficient in any respect, please consider it as a request to extend time to oppose, pursuant to 37 C.F.R. § 2.102.

PAYMENT OF THE FILING FEE

Attached is a check in the amount of \$600.00 in payment of the requisite fee for this Notice of Opposition. If the check becomes disassociated from this filing or if the amount is insufficient, any deficiencies and the fee should be charged to Deposit Account No. 23-0650.

CORRESPONDENCE ADDRESS

Please recognize Barbara E. Johnson, Registration No. 31,198; William H. Logsdon, Registration No. 22,132; Russell D. Orkin, Registration No. 25,363; David C. Hanson, Registration No. 23,024; Frederick B. Ziesenheim, Registration No. 19,438; Richard L. Byrne, Registration No. 28,498; Kent E. Baldauf, Registration No. 25,826; Paul M. Reznick, Registration No. 33,059; John W. McIlvaine, Registration No. 34,219; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Randall A. Notzen, Registration No. 36,882; James G. Porcelli, Registration No. 33,757; Kent E. Baldauf, Jr., Registration No. 36,082; Christian E. Schuster, Registration No. 43,908; Nathan J. Prepelka, Registration No. 43,016; Jessica M. Schroth, Registration No. 47,102; Kirk M. Miles, Registration No. 37,891; J. Matthew Pritchard, Registration No. 46,228; Darrell E. Williams, Registration No. 45,222; Philip J. Foret, Registration No. 51,689; Patricia A. Olosky, Registration No. 53,411; Alexander Detschelt, Registration No. 50,261; and Gwen R. Acker Wood, Registration No. 51,027 of Pittsburgh, Pennsylvania, all attorneys admitted to the Bar of the Commonwealth of Pennsylvania, whose mailing address is 700 Koppers Building, 436 Seventh Avenue, Pittsburgh, Pennsylvania 15219-1818, Telephone No. 412-471-8815, as its attorneys to prosecute this application to registration, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.

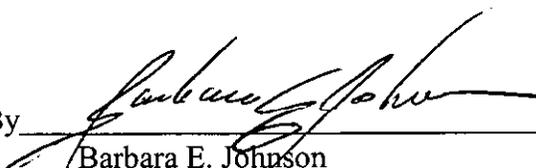
All correspondence and telephone calls should be addressed to Barbara E. Johnson
at the address shown above.

INSPIRE PHARMACEUTICALS, INC.

By Its Attorney

June 4, 2004

Date

By  _____

Barbara E. Johnson

Registration No. 31,198

WEBB ZIESENHEIM LOGSDON

ORKIN & HANSON, P.C.

700 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219-1818

Telephone No.: (412) 471-8815

Facsimile No.: (412) 471-4094

E-mail: webblaw@webblaw.com

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

In the matter of: :
: :
Application Serial No. 78/235,715 :
: :
Filed: April 9, 2003 :
: :
Applicant: Medi-Physics, Inc. :
: :
Trademark: INSPIRUS :
: :
Published: April 6, 2004 :
: :

INSPIRE PHARMACEUTICALS, INC., :
: :
Opposer, :
: :
v. :
: :
MEDI-PHYSICS, INC. :
: :
Applicant. :
: :

Opposition No.

Pittsburgh, Pennsylvania
June 4, 2004

NOTICE OF OPPOSITION

Opposer, INSPIRE PHARMACEUTICALS, INC., a Delaware corporation, having its principal place of business at 4222 Emperor Boulevard, Suite 470, Durham, North Carolina, 27703-8466 (hereinafter referred to as "Opposer") believes that it will be damaged by the registration

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on June 4, 2004.

Helen Gerace
(Name of Person Mailing Paper)

Helen Gerace June 4, 2004
Signature Date

of the mark shown in Application Serial No. 78/235,715, filed April 9, 2003, for 1) implantable radiation therapy preparations consisting of encapsulated radioisotope brachytherapy sources and 2) radiation therapy and imaging devices and equipment, namely, implantable radiation therapy devices consisting of encapsulated radioisotope brachytherapy sources, and radiation therapy delivery systems consisting primarily of radioactive seeds and a bio-absorbable medium; needles for medical purposes; suture needles; and parts and fittings for the aforesaid goods, in International Classes 005 and 010 and hereby opposes the same.

The specific grounds for opposition are as follows:

1. Opposer is a corporation existing under the laws of the State of Delaware, is located at Durham, North Carolina and is doing business at Durham and elsewhere throughout the United States.

2. Opposer is engaged in the field of pharmaceuticals and medical services and devices, including diagnosis and treatment of conditions of the upper and lower respiratory tract and other epithelial surfaces using pharmaceuticals, medical devices, assays and computer software and models.

3. Over the years, Opposer's pharmaceuticals and medical services sold under its mark have gained major recognition and wide acceptance in the pharmaceuticals field of medicine, for quality services and good value.

4. Opposer is the owner of the corporate and trade name, Inspire Pharmaceuticals, Inc. and United States Service Mark Registration No. 2,117,424 issued on December 2, 1997 for "INSPIRE PHARMACEUTICALS, INC." and Design; United States Service Mark Registration No. 2,578,526 issued on June 11, 2002 for "INSPIRE" and Design; United States Service Mark Registration No. 2,578,523 issued on June 11, 2002, for "INSPIRE"; U.S. Trademark Application Serial No. 76/308,923 filed September 4, 2001, as Intent-to-Use, for "INSPIRE" and

Design; and U.S. Trademark Application Serial No. 76/308,918 filed September 4, 2001, as Intent-to-Use, for "INSPIRE", collectively for goods and services in International Classes 5 and 42.

5. Opposer's goods and services sold under its marks are varied in nature and stage of development, and pertain to ophthalmic, respiratory, and cardiovascular pharmaceuticals, as well as oncologic diagnostics, and include without limitation dry eye, rhinitis and sinusitis pharmaceuticals, antithrombotic cardiovascular drugs, allergy medications, cystic fibrosis treatments, and medical devices.

6. Because of Opposer's extensive use of its trade name and trademarks, it has substantial goodwill which is an extremely valuable asset of Opposer and purchasers of such goods and services have come to associate INSPIRE with Opposer.

7. On information and belief based on the Application, Applicant, MEDI-PHYSICS, INC., is a Delaware corporation having a place of business at 101 Carnegie Center, Princeton, New Jersey, 08540-6231.

8. The Application was filed April 9, 2003, and seeks registration of INSPIRUS as a trademark for 1) implantable radiation therapy preparations consisting of encapsulated radioisotope brachytherapy sources and 2) radiation therapy and imaging devices and equipment, namely, implantable radiation therapy devices consisting of encapsulated radioisotope brachytherapy sources, and radiation therapy delivery systems consisting primarily of radioactive seeds and a bio-absorbable medium; needles for medical purposes; suture needles; and parts and fittings for the aforesaid goods, in International Classes 005 and 010.

9. Applicant's mark was published for opposition on April 6, 2004. On one occasion up to and including May 5, 2004, Opposer requested a thirty day extension of time within which to oppose up to and including June 5, 2004.

10. Applicant's use of INSPIRUS on or in connection with its medical devices relating to radiation therapy is likely to cause confusion or to cause mistake, or will deceive the public into believing that said medical devices relating to oncologic diagnostics emanate from Opposer and/or are licensed by Opposer and/or are approved by Opposer.

11. Because the dominant portion of each of the words "inspirus" and "inspire" have the same predominating "INSPIR" prefix, Applicant's mark INSPIRUS for medical devices is sufficiently similar to the mark INSPIRE for various medical devices so as to be likely to cause confusion as to the source of the goods and services.

12. If Applicant is permitted to register INSPIRUS, Applicant will be in a position to harass and annoy Opposer in offering its goods and services for sale to the public.

13. 15 U.S.C. § 1052(d) bars Applicant's mark from registration.

14. The mark of the opposed Application is confusingly and deceptively similar to Opposer's corporate name, trade name and previously registered and used INSPIRE marks as applied to the respective goods and services of the parties.

15. In view of the foregoing, Opposer believes, and therefore alleges, that use and registration of the mark herein opposed will damage Opposer for the reasons, among others: (a) that purchasers, users and persons in the trade in related professions will be confused as to the source or origin of the opposed goods and/or services in connection with which the marks are alleged to be used; and (b) that purchasers, users and persons in the trade in related professions will assume, contrary to the fact, that Applicant's opposed goods are associated with, endorsed by, or in some way related to or otherwise sponsored by or approved by Opposer.

17. Accordingly, Opposer will be damaged by registration of INSPIRUS to Applicant.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this opposition be sustained.

If this Notice of Opposition is found to be deficient in any respect, please consider it as a request to extend time to oppose, pursuant to 37 C.F.R. § 2.102.

PAYMENT OF THE FILING FEE

Attached is a check in the amount of \$600.00 in payment of the requisite fee for this Notice of Opposition. If the check becomes disassociated from this filing or if the amount is insufficient, any deficiencies and the fee should be charged to Deposit Account No. 23-0650.

CORRESPONDENCE ADDRESS

Please recognize Barbara E. Johnson, Registration No. 31,198; William H. Logsdon, Registration No. 22,132; Russell D. Orkin, Registration No. 25,363; David C. Hanson, Registration No. 23,024; Frederick B. Ziesenheim, Registration No. 19,438; Richard L. Byrne, Registration No. 28,498; Kent E. Baldauf, Registration No. 25,826; Paul M. Reznick, Registration No. 33,059; John W. McIlvaine, Registration No. 34,219; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Randall A. Notzen, Registration No. 36,882; James G. Porcelli, Registration No. 33,757; Kent E. Baldauf, Jr., Registration No. 36,082; Christian E. Schuster, Registration No. 43,908; Nathan J. Prepelka, Registration No. 43,016; Jessica M. Schroth, Registration No. 47,102; Kirk M. Miles, Registration No. 37,891; J. Matthew Pritchard, Registration No. 46,228; Darrell E. Williams, Registration No. 45,222; Philip J. Foret, Registration No. 51,689; Patricia A. Olosky, Registration No. 53,411; Alexander Detschelt, Registration No. 50,261; and Gwen R. Acker Wood, Registration No. 51,027 of Pittsburgh, Pennsylvania, all attorneys admitted to the Bar of the Commonwealth of Pennsylvania, whose mailing address is 700 Koppers Building, 436 Seventh Avenue, Pittsburgh, Pennsylvania 15219-1818, Telephone No. 412-471-8815, as its attorneys to prosecute this application to registration, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.

All correspondence and telephone calls should be addressed to Barbara E. Johnson
at the address shown above.

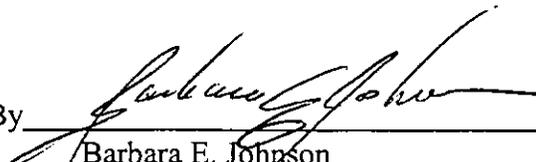
INSPIRE PHARMACEUTICALS, INC.

By Its Attorney

June 4, 2004

Date

By



Barbara E. Johnson

Registration No. 31,198

WEBB ZIESENHEIM LOGSDON

ORKIN & HANSON, P.C.

700 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219-1818

Telephone No.: (412) 471-8815

Facsimile No.: (412) 471-4094

E-mail: webblaw@webblaw.com

TAB

Date: June 4, 2004
Attorney Docket No.: 3798-044076

COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3513

Sir:

Transmitted herewith for filing with the United States Patent and Trademark Office is:

INSPIRE PHARMACEUTICALS, INC. v. MEDI-PHYSICS, INC.

FOR: Trademark Application
 X Other Notice of Opposition re Application Serial No. 78/235,715 for
the mark "INSPIRUS" in International Classes 005 and 010

including:

 - specimen(s) showing the mark as actually used,
and a check for \$600.00 for the filing fee.

The Commissioner of Patents and Trademarks is hereby authorized to charge any additional payment of the fees associated with this communication to Deposit Account No. 23-0650. Please refund any overpayment to Deposit Account No. 23-0650.

The original and two copies of this Transmittal sheet are enclosed.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By *Barbara E. Johnson*
Barbara E. Johnson

Registration No. 31,198
Attorney for Opposer
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on June 4, 2004.

Helen Gerace
Signature *Helen Gerace* June 4, 2004
Date

