

ESTTA Tracking number: **ESTTA283094**

Filing date: **05/11/2009**

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	Inspire Pharmaceuticals, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	4222 Emperor Boulevard Suite 470 Durham, NC 27703 UNITED STATES		

Attorney information	Kent E. Baldauf, Jr. The Webb Law Firm 700 Koppers Building 436 Seventh Avenue Pittsburgh, PA 15219 UNITED STATES webblaw@webblaw.com Phone:412-471-8815		
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### Applicant Information

Application No	77395989	Publication date	04/21/2009
Opposition Filing Date	05/11/2009	Opposition Period Ends	05/21/2009
Applicant	Inspire Medical Systems, Inc. Suite 304 7100 Northland Circle North Brooklyn Park, MN 55428 UNITED STATES		

### Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: electrical stimulation apparatus for the treatment of sleep apnea, namely, an implantable nerve or muscle stimulator for health and medical purposes; medical apparatus for the treatment of sleep apnea, namely, an upper airway stimulator
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2117424	Application Date	04/29/1996
Registration Date	12/02/1997	Foreign Priority Date	NONE
Word Mark	INSPIRE PHARMACEUTICALS, INC.		

Design Mark			
Description of Mark	The mark consists in part of a circle containing three cilia.		
Goods/Services	Class 042. First use: First Use: 1996/01/19 First Use In Commerce: 1996/01/19 medical services, namely, 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		

U.S. Registration No.	2578526	Application Date	09/04/2001
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	INSPIRE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/04/19 First Use In Commerce: 2000/04/19 PHARMACEUTICALS, NAMELY PREPARATIONS FOR DIAGNOSIS AND TREATMENT OF RESPIRATORY DISEASES, LUNG DISEASES, EYE DISEASES, BRONCHITIS, MUCOUS MEMBRANES, LUNG CANCER AND CILIARY DISEASES		

U.S. Registration No.	2578523	Application Date	09/04/2001
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	INSPIRE		

Design Mark	<b>INSPIRE</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/04/19 First Use In Commerce: 2000/04/19 PHARMACEUTICALS, NAMELY PREPARATIONS FOR DIAGNOSIS AND TREATMENT OF RESPIRATORY DISEASES, LUNG DISEASES, EYE DISEASES, BRONCHITIS, MUCOUS MEMBRANES, LUNG CANCER AND CILIARY DISEASES		

U.S. Registration No.	2886978	Application Date	09/04/2001
Registration Date	09/21/2004	Foreign Priority Date	NONE

Word Mark	INSPIRE
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 005. First use: First Use: 2002/12/02 First Use In Commerce: 2002/12/02 PHARMACEUTICALS, NAMELY PREPARATIONS FOR DIAGNOSIS AND TREATMENT OF EAR DISEASES, GASTRO-INTESTINAL DISEASES, ARTHRITIS, JOINT DISEASES, CONNECTIVE TISSUE DISEASES, SINUS DISEASES, VAGINAL DRYNESS, FEMALE SEXUAL DYSFUNCTION AND DRY MOUTH; NASAL AEROSOLS		
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U.S. Registration No.	2886977	Application Date	09/04/2001
Registration Date	09/21/2004	Foreign Priority Date	NONE

Word Mark	INSPIRE
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Design Mark	<h1>INSPIRE</h1>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/12/02 First Use In Commerce: 2002/12/02 PHARMACEUTICALS, NAMELY PREPARATIONS FOR DIAGNOSIS AND TREATMENT OF EAR DISEASES, GASTRO-INTESTINAL DISEASES, ARTHRITIS, JOINT DISEASES, CONNECTIVE TISSUE DISEASES, SINUS DISEASES, VAGINAL DRYNESS, FEMALE SEXUAL DYSFUNCTION AND DRY MOUTH; NASAL AEROSOLS		

U.S. Registration No.	3154607	Application Date	10/29/2004
Registration Date	10/10/2006	Foreign Priority Date	NONE

Word Mark	INSPIRE
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Design Mark	<h1>INSPIRE</h1> 		
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Description of Mark	NONE		
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Goods/Services	Class 005. First use: First Use: 2004/12/06 First Use In Commerce: 2004/12/06 Pharmaceutical preparations for treatment of cardiovascular diseases, and treatment or reduction of pain, including traumatic pain, neuropathic pain, organ pain and/or pain associated with diseases		
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U.S. Registration No.	3154606	Application Date	10/29/2004
Registration Date	10/10/2006	Foreign Priority Date	NONE

Word Mark	INSPIRE
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Design Mark	<h1>INSPIRE</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/12/06 First Use In Commerce: 2004/12/06 Pharmaceutical preparations for treatment of cardiovascular diseases, and treatment or reduction of pain, including traumatic pain, neuropathic pain, organ pain and/or pain associated with diseases

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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	/KEB,Jr./
Name	Kent E. Baldauf, Jr.
Date	05/11/2009

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

INSPIRE PHARMACEUTICALS, INC.,	:	
	:	Opposition No. Not Assigned
Opposer,	:	
	:	Application Serial No. 77/395,989
v.	:	
	:	Trademark: INSPIRE
INSPIRE MEDICAL SYSTEMS, INC.	:	
	:	
Applicant.	:	

**NOTICE OF OPPOSITION**

The above-identified 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 of the mark shown in Application Serial No. 77/395,989, filed February 13, 2008, for “electrical stimulation apparatus for the treatment of sleep apnea, namely, an implantable nerve or muscle stimulator for health and medical purposes; medical apparatus for the treatment of sleep apnea, namely, an upper airway stimulator” in International Class 010 (hereinafter referred to as “the Application”) and hereby opposes 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 in Durham, North Carolina and is doing business at Durham, North Carolina and elsewhere throughout the United States.
2. Opposer is engaged in the field of pharmaceuticals and medical services, 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 names and marks 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"; United States Trademark Registration No. 2,886,978 issued on September 21, 2004 for "INSPIRE" and Design; United States Trademark Registration No. 2,886,977 issued on September 21, 2004 for "INSPIRE" ; United States Trademark Registration No. 3,154,607 issued on October 10, 2006, for "INSPIRE" and Design; and United States Trademark Registration No. 3,154,606 issued on October 10, 2006, for "INSPIRE."

5. Opposer's goods and services sold under its marks are varied in nature and stage of development, and pertain to ophthalmic and respiratory pharmaceuticals, allergy medications, cystic fibrosis treatments, and medical services using pharmaceuticals, medical devices, assays and computer software and models.

6. Because of Opposer's extensive use of its corporate name, 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, INSPIRE MEDICAL SYSTEMS, INC., is a corporation of existing under the law of the State of Delaware having a place of business at Suite 304, 7100 Northland Circle North, Brooklyn Park, MN 55428.

8. The Application was filed February 13, 2008 and seeks registration of INSPIRE as a trademark for "electrical stimulation apparatus for the treatment of sleep apnea, namely, an

implantable nerve or muscle stimulator for health and medical purposes; medical apparatus for the treatment of sleep apnea, namely, an upper airway stimulator” in International Class 010.

9. Applicant’s mark was published for opposition on April 21, 2009. This opposition is being timely filed prior to the date to oppose.

10. Applicant’s mark INSPIRE for a medical apparatus or electrical stimulation apparatus for the treatment of sleep apnea is identical to Opposer’s name and mark INSPIRE and is used on related goods so as to be likely to cause confusion as to the source of the goods and services.

11. Applicant’s use of INSPIRE on or in connection with its recited products is likely to cause confusion or to cause mistake, or will deceive the public into believing that said products emanate from Opposer and/or are licensed by Opposer and/or are approved by Opposer.

12. If Applicant is permitted to register INSPIRE, 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 its 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.

16. Accordingly, Opposer will be damaged by registration of INSPIRE to Applicant.

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

The undersigned hereby authorizes the United States Patent and Trademark Office to charge any additional fees for Deposit Account No. 23-0650 and refund any overpayment in the form of a check.

Dated: May 11, 2009

By



Kent E. Baldauf, Jr.  
Registration No. 36,082  
J. Matthew Pritchard  
Registration No. 46,228  
Daniel H. Brean  
Registration No. 59,352

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Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served via First Class Mail, postage pre-paid, this 11<sup>th</sup> day of May, 2009 upon the following:

Eric D. Paulsrud  
Leonard, Street, and Deinard  
150 South 5<sup>th</sup> Street  
Suite 2300  
Minneapolis, MN 55402-4238

  
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Attorney for Opposer