

ESTTA Tracking number: **ESTTA692498**

Filing date: **08/28/2015**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Pfizer Inc.
Granted to Date of previous extension	08/30/2015
Address	235 East 42nd Street New York, NY 10017 UNITED STATES

Name	Pfizer, Inc.
Granted to Date of previous extension	08/30/2015
Address	235 East 42nd Street New York, NY 10017 UNITED STATES

Attorney information	Paul C. Llewellyn Kaye Scholer LLP 250 West 55th Street New York, NY 10019-9710 UNITED STATES paul.llewellyn@kayescholer.com, tmdocketing@kayescholer.com, john.rynkiewicz@kayescholer.com Phone:212-836-7828
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Applicant Information

Application No	86412197	Publication date	03/03/2015
Opposition Filing Date	08/28/2015	Opposition Period Ends	08/30/2015
Applicant	Ignyta, Inc. 11111 Flintkote Avenue SAN DIEGO, CA 92121 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pharmaceutical preparations for use in the treatment of cancer, oncology, tumors, hematological tumors and growths, and hematological diseases and disorders
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pharmaceutical research and development; medical and scientific research, namely, conducting clinical trials for others; medical and scientific research in the fields of treatment of cancer, oncology, tumors, hematological tumors and growths, and

hematological diseases and disorders

Applicant Information

Application No	86426187	Publication date	03/03/2015
Opposition Filing Date	08/28/2015	Opposition Period Ends	08/30/2015
Applicant	Ignyta, Inc. 11111 Flintkote Avenue SAN DIEGO, CA 92121 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Pharmaceutical preparations for use in the treatment of cancer, oncology, tumors, hematological tumors and growths, and hematological diseases and disorders

Class 042. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Pharmaceutical research and development; medical and scientific research, namely, conducting clinical trials for others; medical and scientific research in the fields of treatment of cancer, oncology, tumors, hematological tumors and growths, and hematological diseases and disorders

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3349442	Application Date	01/26/2005
Registration Date	12/04/2007	Foreign Priority Date	NONE
Word Mark	INLYTA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2007/03/01 First Use In Commerce: 2007/03/01 Pharmaceutical preparations for the treatment of cancer		

Attachments	78554237#TMSN.png(bytes) IGNYTA Notice of Opp.pdf(21633 bytes)
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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	/paul c. llewellyn/
Name	Paul C. Llewellyn
Date	08/28/2015

1. Pfizer is a research-based biomedical and pharmaceutical company in the business of discovering, developing, manufacturing and delivering medicines.
2. Pfizer has used the INLYTA® trademark continuously since at least March 2007 in connection with INLYTA® (axitinib), new oral medication for the treatment of certain patients with advanced renal cell carcinoma.
3. Pfizer is the owner of U.S. Trademark Registration No. 3349442 on the Principal Register for the trademark INLYTA covering a “Pharmaceutical preparations for the treatment of cancer” in International Class 5.
4. Said registration is valid and subsisting and Pfizer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Pfizer’s testimony period.
5. The INLYTA® trademark is inherently distinctive; it is a fanciful and coined term with no meaning other than to identify Pfizer’s product.
6. The INLYTA® trademark was used in connection with axitinib in clinical trials since as early as 2007 and launched in the United States after FDA approval in 2012.
7. Since FDA approval of INLYTA® in 2012, Pfizer has spent substantial time, effort and money to promote the sale of the product in the United States under the INLYTA® mark.
8. Pfizer has sold and continues to sell substantial quantities of INLYTA® medicine in the United States and has spent substantial time, effort and money promoting the sale of such product under the mark. Pfizer is also expending numerous resources for the further clinical investigation of INLYTA for new uses.

9. Despite Pfizer's long prior common law and statutory rights in the INLYTA® mark, Applicant Ignyta, Inc. ("Applicant"), with both constructive and actual notice of Pfizer's federal registration, and long after Pfizer established rights in and to the INLYTA® mark, adopted and filed the following applications for registration of the mark IGNYTA:

- a. IGNYTA (standard character format), Serial No. 86412197, for "Pharmaceutical preparations for use in the treatment of cancer, oncology, tumors, hematological tumors and growths, and hematological diseases and disorders" in International Class 5 and for "Pharmaceutical research and development; medical and scientific research, namely, conducting clinical trials for others; medical and scientific research in the fields of treatment of cancer, oncology, tumors, hematological tumors and growths, and hematological diseases and disorders" in Class 42; and
- b. IGNYTA & design, Serial No. 86426187, for "Pharmaceutical preparations for use in the treatment of cancer, oncology, tumors, hematological tumors and growths, and hematological diseases and disorders" in International Class 5 and for "Pharmaceutical research and development; medical and scientific research, namely, conducting clinical trials for others; medical and scientific research in the fields of treatment of cancer, oncology, tumors, hematological tumors and growths, and hematological diseases and disorders" in Class 42.

10. Applicant's marks were published for opposition on March 3, 2015. Pfizer timely filed for Extensions of Time to Oppose, and the Trademark Trial and Appeal Board has granted extensions until Sunday, August 30, 2015.

11. Pfizer's INLYTA® mark has priority over Applicant's IGNYTA marks because the filing date of Pfizer's trademark application is January 26, 2005, and Pfizer's date of first use is

January 2012, prior to the October 1, 2014 and October 16, 2014 filing dates of Applicant's intent-to-use trademark applications for the mark IGNYTA and IGNYTA & design.

12. Applicant's IGNYTA mark is substantially or highly similar to the mark INLYTA® in sound, appearance and commercial impression.

13. The goods and services set forth in the subject application are legally identical in part and highly related in part to the goods for which Pfizer's INLYTA® trademark is registered and used, and many who encounter Applicant's marks are likely to think that the company that offers Applicant's products and services might be authorized by, sponsored by, licensed by, affiliated with or related to the company that offers Pfizer's INLYTA® product.

14. As a result, Applicant's applied-for IGNYTA marks, if used in conjunction with the goods and services set forth in the subject applications, are likely to cause confusion, mistake, or to deceive as to the origin, source, sponsorship or affiliation of Applicant's goods and services.

15. Applicant's applied-for IGNYTA marks so resemble Opposer's previously used and registered mark INLYTA®, as to be likely, when applied to the goods and services set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

16. Applicant's applied-for IGNYTA marks are a close approximation of Opposer's previously used and registered INLYTA® mark, which is a name or identity of substantial reputation that is closely identified with Opposer, so as to be likely, when applied to the goods set forth in Applicant's application, to point uniquely to Opposer and to falsely suggest a connection with the Opposer within the meaning of 15 U.S.C. § 1052(a).

WHEREFORE, Opposer respectfully prays that this consolidated opposition be sustained and that registrations to Applicant be refused.

The Patent & Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Opposer's attorneys, Kaye Scholer LLP, Deposit Account No. 11-0228.

Date: August 28, 2015



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Attorneys for Opposer Pfizer Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2015, I caused a true and correct copy of the foregoing Consolidated Notice of Opposition to be served by United States first class mail, postage prepaid, upon the following correspondent of record:

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Jennifer Worksman /s/

Jennifer Worksman