

TTAB

Serial No. 78/390,142

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: ATTORNEY'S DOCKET NUMBER
INSPIRE PHARMACEUTICALS, INC. 3978-044064

ENTITLED "INSPIRE"

COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

EXPRESS MAIL CERTIFICATE

"Express Mail" Label Number EL 881093302 US

Date of Deposit January 12, 2005

I hereby certify that the following attached paper or fee

Transmittal Letter (1 p.-in trip.);
Notice of Opposition (4 pp.);
and Check for Fee of \$300

is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Diane Paull
(Typed name of person mailing paper or fee)

Diane Paull
(Signature of person mailing paper or fee)



01-12-2005

TRANSMITTAL LETTER

Serial No. 78/390,142
Mark: INSPIRE
Attorney Docket No. 3978-044064

COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

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

OPPOSER: INSPIRE PHARMACEUTICALS, INC.

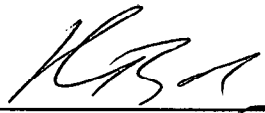
FOR: Trademark Application _____
 Renewal of Trademark _____
 Declaration _____
 Notice of Opposition to the mark INSPIRE

including:
 Check in the amount of \$ 300

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 
Kent E. Baldauf, Jr.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application Serial No. 78/390142

For the mark INSPIRE

Published in the Official Gazette on December 14, 2004

INSPIRE PHARMACEUTICALS, INC.,

Opposer,

v.

AMNIS CORPORATION,

Applicant.

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

INSPIRE PHARMACEUTICALS, INC., a Delaware corporation,
4222 Emperor Boulevard, Suite 470,
Durham, North Carolina 27703

The above-identified Opposer, Inspire Pharmaceuticals, Inc., believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Upon information and belief based on the application, Applicant, Amnis Corporation, is a Washington corporation located at 2505 Third Avenue, Suite 210, Seattle, Washington 98121.

2. Applicant filed the Application for registration of the mark "INSPIRE" on March 24, 2004, for the following goods in International Class 09: "computer software for operating, configuration of, monitoring, and maintenance of cell analysis instruments".

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3. Applicant's alleged mark "INSPIRE" was published in the December 14, 2004 issue of the Trademark Official Gazette of the United States Patent and Trademark Office.

4. Inspire Pharmaceuticals, Inc. is the owner of U.S. Trademark Registration No. 2,117,424 for the mark "INSPIRE PHARMACEUTICALS, INC. (& Design)" for "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". This mark is registered in International Class 42 and Inspire Pharmaceuticals, Inc. has continuously used this mark since 1996.

5. Inspire Pharmaceuticals, Inc. is the owner of U.S. Trademark Registration No. 2,578,523 for the mark "INSPIRE" for "pharmaceuticals, namely preparations for diagnosis and treatment of respiratory diseases, lung diseases, eye diseases, bronchitis, mucous membranes, lung cancer and ciliary diseases". This mark is registered in International Class 05 and Inspire Pharmaceuticals, Inc. has continuously used this mark since 2000.

6. Inspire Pharmaceuticals, Inc. is the owner of U.S. Trademark Registration No. 2,578,526 for the mark "INSPIRE (& Design)" for "pharmaceuticals, namely preparations for diagnosis and treatment of respiratory diseases, lung diseases, eye diseases, bronchitis, mucous membranes, lung cancer and ciliary diseases". This mark is registered in International Class 05 and Inspire Pharmaceuticals, Inc. has continuously used this mark since 2000.

7. Inspire Pharmaceuticals, Inc. is the owner of U.S. Trademark Registration No. 2,886,977 for the mark "INSPIRE" for "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". This mark is registered in International Class 05 and Inspire Pharmaceuticals, Inc. has continuously used this mark since 2002.

8. Inspire Pharmaceuticals, Inc. is the owner of U.S. Trademark Registration No. 2,886,978 for the mark "INSPIRE (& Design)" for "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". This mark is registered in International Class 05 and Inspire Pharmaceuticals, Inc. has continuously used this mark since 2002.

9. Inspire Pharmaceuticals, Inc. is the owner of U.S. Trademark Application Serial No. 76/618,379 for the mark "INSPIRE" for "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". This mark is pending in International Class 05 and Inspire Pharmaceuticals, Inc. has an intent to use this mark.

10. Inspire Pharmaceuticals, Inc. is the owner of U.S. Trademark Application Serial No. 76/618,380 for the mark "INSPIRE (& Design)" for "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". This mark is pending in International Class 05 and Inspire Pharmaceuticals, Inc. has a bona fide intent to use this mark.

11. Inspire Pharmaceuticals, Inc. is engaged in the business of drug discovery and drug development related to respiratory diseases, cardiovascular diseases, diseases of the eye and various other diseases as described in the above registrations/applications.

12. Inspire Pharmaceuticals, Inc. currently analyzes blood platelets and other cells for indications of cardiovascular disease for a cardiovascular project in clinical trials. In a prior lung cancer diagnosis trial, lung cells were analyzed for indications of cancer. In the course of ongoing drug discovery and drug development efforts, Inspire Pharmaceuticals, Inc.

routinely analyzes cells for the effects of various drug candidates on the cells or for indicators of disease, using cell analysis methods commonly used in the drug discovery business, including computer hardware, software and cell assay methods developed for this purpose.

13. Inspire Pharmaceuticals, Inc. has been using the mark "INSPIRE" in commerce in connection with the aforementioned goods and services since at least 1996, and is still using this mark.

14. Because of the extensive use of the mark "INSPIRE" by Inspire Pharmaceuticals, Inc., the public strongly associates the mark with Opposer for pharmaceuticals and drug discovery and development in the areas of respiratory diseases, cardiovascular diseases, eye and other diseases.

15. On March 24, 2004, Applicant filed the present intent-to-use application for the alleged mark "INSPIRE" for the aforementioned goods.

16. Applicant's proposed use of the mark "INSPIRE" in connection with computer software used for maintenance of cell analysis instruments is likely to be confused with Inspire Pharmaceutical, Inc.'s prior use of "INSPIRE" in that persons involved in conducting cell assays and cell analysis would believe that Applicant's products are made, sponsored by, affiliated with or approved by Inspire Pharmaceuticals, Inc.

17. Applicant's proposed use of the mark "INSPIRE" in connection with computer software for maintenance of cell analysis instruments is likely to cause confusion, or cause mistake or will deceive the public into believing that said products emanate from Inspire Pharmaceuticals, Inc., and/or are manufactured by Inspire Pharmaceuticals, Inc., and/or are approved or endorsed by Inspire Pharmaceuticals, Inc.

18. The registration of the mark "INSPIRE" by Applicant on the Principal or Supplemental Registers of the United States Patent and Trademark Office would be inconsistent with Opposer's rights, including those under U.S. Trademark Registration Nos.

2,117,424; 2,578,523; 2,578,526; 2,886,977 and 2,886,978; and pending Trademark Application Serial Nos. 76/618,379 and 76/618,380.

19. 15 U.S.C. §1052(d) bars Applicant's mark from registration.

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

WHEREFORE, Opposer Inspire Pharmaceuticals, Inc. prays that this Opposition be decided in its favor and that Application Serial No. 78/390,142 be rejected, and that no registration be issued for or in connection with that application.

Pursuant to 37 C.F.R. §2.6(a)(17), a check in the amount of \$300 accompanies this submission. The undersigned hereby authorizes the United States Patent and Trademark Office to charge any additional fees to Deposit Account No. 23-0650 and refund any overpayment to our Deposit Account.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

Date: January 12, 2005

By  _____

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