

TTAB

TRANSMITTAL LETTER

Serial No. 78/400,723  
Mark: ASPIRE  
Attorney Docket No. 3978-050872

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 ASPIRE

including:

Check in the amount of \$ 600.00

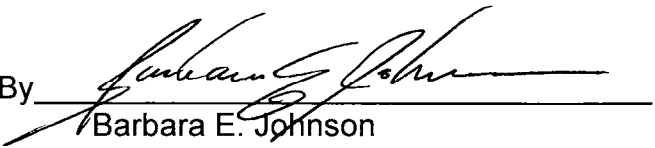
The Commissioner of Patents and Trademarks is hereby authorized to charge any additional payment of the fees associated with this communication to Deposit Account No. 23-0650. Please refund any overpayment to Deposit Account No. 23-0650.


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

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON  
ORKIN & HANSON, P.C.

By

  
Barbara E. Johnson  
Registration No. 31,198  
Attorney for Opposer  
700 Koppers Building  
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04-15-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

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

In the matter of: :  
: :  
Application Serial No. 78/400,723 :  
: :  
Filed: April 13, 2004 :  
: :  
Applicant: Louis M. Gerson Co., Inc. :  
: :  
Trademark: ASPIRE :  
: :  
Published: February 15, 2005 :  
: :

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INSPIRE PHARMACEUTICALS, INC., :  
: :  
Opposer, :  
: :  
v. :  
: :  
LOUIS M. GERSON CO., INC., :  
: :  
Applicant. :

Opposition No.

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600.00 OP

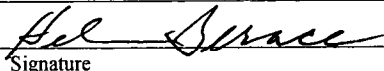
Pittsburgh, Pennsylvania  
April 15, 2005

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. 78/400,723, filed April 13, 2004, for

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 April 15, 2005.

Helen Gerace

  
Signature

04/15/2005  
Date

Respiratory masks for non-medical purposes in International Class 009, and for Respiratory masks for medical purposes in International Class 010 (hereinafter referred to as "the Application") 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, 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"; 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";

U.S. Trademark Application Serial No. 76/618,380 filed October 29, 2004, as Intent-to-Use, for "INSPIRE" and Design; and U.S. Trademark Application Serial No. 76/618,379 filed October 29, 2004, as Intent-to-Use, for "INSPIRE", for goods and services in International Classes 005 and 042.

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 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, LOUIS M. GERSON CO., INC., is a Delaware corporation having a place of business at 15 Sproat Street, Middleboro, Massachusetts 02346.

8. The Application was filed April 13, 2004 and seeks registration of ASPIRE as a trademark for Respiratory masks for non-medical purposes in International Class 009, and for Respiratory masks for medical purposes in International Class 010.

9. Applicant's mark was published for opposition on February 15, 2005. On one occasion up to and including March 16, 2005, Opposer requested a 30 day extension of time within which to oppose. This opposition is being timely filed prior to the expiration of that extension.

10. Applicant's mark ASPIRE for Respiratory masks for medical purposes is sufficiently similar to Opposer's name and mark INSPIRE so as to be likely to cause confusion as to the source of the goods and services.

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

12. If Applicant is permitted to register ASPIRE, 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 ASPIRE to Applicant.

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

This Notice of Opposition is submitted in duplicate as required by 37 C.F.R. §2.105.

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; 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; Gwen R. Acker Wood, Registration No. 51,027 and Craig M. Waller, Registration No. 54,771 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 Opposition, with full power of substitution and revocation, and to transact

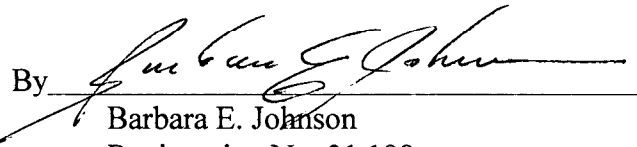
all business in the Patent and Trademark Office and before any appellate tribunal in connection therewith.

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

INSPIRE PHARMACEUTICALS, INC.

By Its Attorney

April 15, 2005  
Date

By   
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Serial No. 78/400,723

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

ATTORNEY'S DOCKET NUMBER

INSPIRE PHARMACEUTICALS, INC.

3978-050872

ENTITLED

"ASPIRE"

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

**EXPRESS MAIL CERTIFICATE**

"Express Mail" Label Number EV 338407358 US

Date of Deposit April 15, 2005

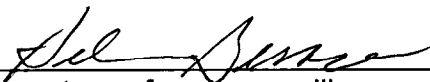
I hereby certify that the following attached paper or fee

Transmittal Letter (1 p.-in trip.);  
Notice of Opposition (6 pp.);  
and Check for Fee of \$600

are 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.

Helen Gerace

(Typed name of person mailing paper or fee)



(Signature of person mailing paper or fee)