

ESTTA Tracking number: **ESTTA677798**

Filing date: **06/12/2015**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	CyThera Pharmaceuticals, Inc.,		
Entity	Corporation	Citizenship	Delaware
Address	2800 Woodlawn Drive, Suite 101 Honolulu, HI 96822 UNITED STATES		

Attorney information	Seth M. Reiss Seth M Reiss, AAL, ALLLC 3770 Lurline Drive Honolulu, HI 96816 UNITED STATES seth.reiss@lex-ip.com Phone:808 521 7080		
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Registration Subject to Cancellation

Registration No	3240767	Registration date	05/08/2007
Registrant	CYTHERIS S.A. 175, rue Jean-Jacques Rousseau Issy-les-Moulineaux, 92138, FRANCE		

Goods/Services Subject to Cancellation

Class 005. First Use: 2003/04/00 First Use In Commerce: 2003/04/00 All goods and services in the class are cancelled, namely: PHARMACEUTICAL PREPARATIONS FOR THE TREATMENT OF ONCOLOGICAL DISEASES AND CONDITIONS, AND IMMUNOLOGICAL DISEASES AND CONDITIONS; VETERINARY PREPARATIONS FOR THE TREATMENT OF ONCOLOGICAL DISEASES AND CONDITIONS, AND INFECTIOUS DISEASES AND CONDITIONS IN LIVESTOCK AND DOMESTIC ANIMALS; SANITARY PREPARATIONS FOR RESEARCH AND SCIENTIFIC LABORATORY USE
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition to Cancel Reg no 3240767.pdf(46368 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	/seth m reiss/
Name	Seth M. Reiss
Date	06/12/2015

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

CyThera Pharmaceuticals, Inc.,

Petitioner,

vs.

Cytheris S.A.,

Registrant.

Cancellation No. _____

Registration No. 3240767

For the Mark: CYTHERIS

Registered May 8, 2007

In Class(es): 005

PETITION TO CANCEL; CERTIFICATE OF
ESTA FILING; CERTIFIATE OF
SERVICE

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION TO CANCEL

CyThera Pharmaceuticals, Inc. (“Petitioner”) believes it will be damaged by the continued registration of the mark CYTHERIS, shown in U.S. Trademark Registration No. 3240767, in International Class 005, and hereby petitions to cancel the same. Based on information and belief, USPTO records, other publicly available records, and other information of which Petitioner has firsthand knowledge, as grounds for cancellation, Petitioner alleges that:

1. Petitioner is a Delaware corporation having a place of business at 2800 Woodlawn Drive, Suite 101, Honolulu, Hawaii 96816, actively engaged in pharmaceutical biotechnology research, developing novel treatments for autoimmune disease.

2. According to the records of the USPTO, the current owner of U.S. Trademark Registration No. 3240767 for the mark CYTHERIS in class 005 is Cytheris S. A., a corporation organized under the laws of France, with an address of 175 Rue Jean-Jacques Rousseau, Issy-les-Moulineaux 92130, France.
4. On June 19, 2003, Registrant filed U.S. Trademark Application No. 78976504 to register the mark CYTHERIS in connection with "pharmaceutical preparations for the treatment of oncological diseases and conditions, and immunological diseases and conditions; veterinary preparations for the treatment of oncological diseases and conditions, and infectious diseases and conditions in livestock and domestic animals; sanitary preparations for research and scientific laboratory use," which application matured into Registration No. 3240767 on May 8, 2007 (the "Subject Registration").
5. On May 6, 2013, Registrant filed a combined Section 8 and 15 declaration with the USPTO in regard to the Subject Registration which declaration was accepted by the USPTO on May 25, 2013.
6. On January 20, 2015, Petitioner filed an application to register the word mark CYTHERA PHARMACEUTICALS in connection with "medical and scientific research in the field of pharmaceuticals" in class 042, which application was assigned U.S. Trademark Application No. 86508743 (the "Application").
7. In the Application's most recent Office Action, dated April 23, 2015, the Examining Attorney cited, as a basis for refusal to allow the Application, likelihood of confusion with the mark CYTHERIS of the Subject Registration.

8. Petitioner is and will continue to be damaged by the Subject Registration's continued registration because it effectively "blocks" Petitioner's Application from maturing to registration.

9. The Subject Registration is subject to cancellation because Registrant has abandoned use of the mark of the Subject Registration.

REGISTRANT HAS ABANDONED THE CYTHERIS MARK

10. Pursuant to 15 U.S.C. § 1064(3), "a petition to cancel a registration of a mark ...may...be filed...by any person who believes that he is or will be damaged...at any time if the registered mark ... has been abandoned..."

11. On information and belief, Registrant has ceased use of the CYTHERIS mark with the intention to abandon the mark and/or with the intention not to resume the use of the mark.

12. The following facts and circumstances are compelling evidence of Registrant's abandonment of the CYTHERIS mark:

(a) Registrant publicly announced the ceasing of operations in June 2013 (<http://www.forbion.com/#/portfolio/cytheris-sa>; accessed 6/9/2015);

(b). Registrant was judicially liquidated on June 13, 2013 as announced by the "Tribunal de Commerce de Nanterre" (<https://actulegales.fr/annonce-legale/1004441336>; <http://www.verif.com/produits/CYTHERIS-421350976/evenement/3245269/>; accessed 6/9/2015);

(c) Registrant's published phone numbers having been disconnected, published website address does not resolve, and published email addresses are undeliverable;

(d) Despite bona fide attempts by Petitioner, Petitioner has been unable to contact Registrant by phone, mail or email.

13. Petitioner has searched for evidence that Registrant has used the CYTHERIS mark subsequent to June 2013, and has found none.

14. The USPTO Assignments database reflects no assignment, or similar document reflecting a change of ownership, has ever been recorded against the Subject Registration.

15. Petitioner is unaware of any conveyance of the CYTHERIS mark and/or Subject Registration from Registrant to any third party.

16. Petitioner is unaware of any party having resumed the use of the CYTHERIS mark after Registrant ceased using the mark.

17. In view of the foregoing, Registrant has abandoned the CYTHERIS mark, is no longer entitled to maintain Registration No. 3240767, and there is no other basis to justify the continued registration of Registration No. 3240767.

CONCLUSION

18. Petitioner is, and will be, damaged by the continued registration of the mark CYTHERIS, of U.S. Trademark Registration No. 3240767, in International Class 005, as the USPTO Examining Attorney of Petitioner's U.S. Application Serial No. 86508743 has refused registration based on a likelihood of confusion with the mark of the Subject Registration.

19. By reason of the foregoing, Registrant is not entitled to continued registration and the Subject Registration should be cancelled.

WHEREFORE, Petitioner believes that it is, and will be, seriously damaged by the continued registration of U.S. Trademark Registration No. 3240767, and respectfully requests that the Trademark Trial and Appeal Board sustain this Petition to Cancel.

Filing fees in the amount of \$300, to cancel the Subject Registration, which is for one class of goods, is being paid concurrently with the filing of this opposition.

Registration No. 3240767
Petition to Cancel
Attorney Docket No. 1843-1TTAB

Please recognize the attorney for Petitioner in this proceeding as and direct all correspondence relating to this proceeding to, Seth M. Reiss, Seth M. Reiss, AAL, ALLLC, 3770 Lurline Drive, Honolulu, Hawaii 96816.

Dated: Honolulu, Hawaii, June 11, 2015.

Respectfully Submitted,

By: /s/ Seth M. Reiss /s/
Seth M. Reiss
Seth M. Reiss, AAL, ALLLC
3770 Lurline Drive
Honolulu, Hawaii 96816
Email: seth.reiss@lex-ip.com
Phone: (808) 521-7080
fax: (808) 675-5805

Attorney for Petitioner CyThera Pharmaceuticals, Inc.

CERTIFICATE OF ESTTA FILING

I hereby certify that a copy of the foregoing Petition to Cancel was filed with the Trademark Trial and Appeal Board via the “Electronic System for Trademark Trials and Appeals” on the below date EST.

Dated: Honolulu, Hawaii, June 12, 2015.

/s/ Seth M. Reiss /s/
Seth M. Reiss

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, a true and complete copy of the foregoing Petition to Cancel together with the ESTTA generated Petition to Cancel has been deposited with the United States Postal Service as first class mail on the date shown below, postage prepaid, in an envelope addressed to Registrant at its address of record on the Subject Registration as follows:

Cytheris, S.A.
175 Rue Jean-Jacques Rousseau
Issy-les-Moulineaux, 92130
France

with a further copy to Registrant's correspondent and domestic representative of record as follows:

Peter J. Willsey
Cooley LLP
1299 Pennsylvania Avenue, NW, Suite 700
Washington, D.C. 20004

Dated: Honolulu, Hawaii, June 12, 2015.

/s/ Seth M. Reiss /s/ _____
Seth M. Reiss