

ESTTA Tracking number: **ESTTA344959**

Filing date: **04/30/2010**

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	Mylan Inc.
Granted to Date of previous extension	05/01/2010
Address	1500 Corporate Drive Canonsburg, PA 15317 UNITED STATES

Attorney information	Rebecca Finkenbinder McNees Wallace & Nurick 100 Pine Street Harrisburg, PA 17108 UNITED STATES trademarks@mwn.com, rfinkenbinder@mwn.com Phone: 717-232-8000
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### Applicant Information

Application No	77828660	Publication date	03/02/2010
Opposition Filing Date	04/30/2010	Opposition Period Ends	05/01/2010
Applicant	TEVA Pharmaceuticals USA, Inc. 1090 Horsham Road North Wales, PA 19454 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparation and substance for human use in the emergency treatment of anaphylaxis
Class 010. All goods and services in the class are opposed, namely: Pharmaceutical injection device for human use in the emergency treatment of anaphylaxis

### Applicant Information

Application No	77828667	Publication date	03/16/2010
Opposition Filing Date	04/30/2010	Opposition Period Ends	
Applicant	TEVA Pharmaceuticals USA, Inc. 1090 Horsham Road North Wales, PA 19454 UNITED STATES		

## Goods/Services Affected by Opposition

Class 005.

All goods and services in the class are opposed, namely: Pharmaceutical preparation and substance for human use in the emergency treatment of anaphylaxis

Class 010.

All goods and services in the class are opposed, namely: Pharmaceutical injection device for human use in the treatment of anaphylaxis

## Grounds for Opposition

Priority and likelihood of confusion

Trademark Act section 2(d)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1124454	Application Date	08/30/1978
Registration Date	08/28/1979	Foreign Priority Date	NONE
Word Mark	EPIPEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 1978/08/17 First Use In Commerce: 1978/08/17 HYPODERMIC INJECTORS		

U.S. Registration No.	1479294	Application Date	06/18/1987
Registration Date	03/08/1988	Foreign Priority Date	NONE
Word Mark	EPIPEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1978/08/17 First Use In Commerce: 1978/08/17 INJECTABLE PHARMACEUTICALS FOR TREATMENT OF ANAPHYLACTIC REACTIONS TO INSECT STINGS		

U.S. Registration No.	2576013	Application Date	07/17/2001
Registration Date	06/04/2002	Foreign Priority Date	NONE
Word Mark	EPIPEN JR. 2-PAK		

Design Mark	<b>EPIPEN JR. 2-PAK</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2001/04/02 First Use In Commerce: 2001/04/02 INJECTABLE PHARMACEUTICALS FOR TREATMENT OF ANAPHYLACTIC REACTIONS TO INSECT STINGS Class 010. First use: First Use: 2001/04/02 First Use In Commerce: 2001/04/02 HYPODERMIC INJECTORS

U.S. Registration No.	2576014	Application Date	07/17/2001
Registration Date	06/04/2002	Foreign Priority Date	NONE

Word Mark	EPIPEN 2-PAK
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Design Mark	<b>EPIPEN 2-PAK</b>
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2001/04/02 First Use In Commerce: 2001/04/02 INJECTABLE PHARMACEUTICALS FOR TREATMENT OF ANAPHYLACTIC REACTIONS TO INSECT STINGS Class 010. First use: First Use: 2001/04/02 First Use In Commerce: 2001/04/02 HYPODERMIC INJECTORS
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U.S. Application No.	77919265	Application Date	01/25/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EPIPEN-READY		

Design Mark	<b>EPIPEN-READY</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: Injectable pharmaceuticals for treatment of anaphylactic reactions Class 010. First use: Medical fluid injectors		

U.S. Application No.	77919257	Application Date	01/25/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	EPIPEN PREPARED
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Design Mark	<b>EPIPEN PREPARED</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: Injectable pharmaceuticals for treatment of anaphylactic reactions Class 010. First use: Medical fluid injectors		

Attachments	73183957#TMSN.gif ( 1 page )( bytes ) 76286512#TMSN.gif ( 1 page )( bytes ) 76286513#TMSN.gif ( 1 page )( bytes ) 77919265#TMSN.jpeg ( 1 page )( bytes ) 77919257#TMSN.jpeg ( 1 page )( bytes ) A1971883.PDF ( 6 pages )(191463 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	/Rebecca Finkenbinder/
Name	Rebecca Finkenbinder
Date	04/30/2010

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

In re Application of  
TEVA Pharmaceuticals USA, Inc.

Serial Nos.	:	77/828,660 and 77/828,667
Marks	:	EPINOW and EPIZIP
Goods	:	International Classes 05 and 10
Filing Date	:	September 17, 2009
Published	:	Official Gazette March 2, 2010 and March 16, 2010
MYLAN INC.,	:	
Opposer	:	
v.	:	Opposition No.
TEVA PHARMACEUTICALS	:	
USA, INC.,	:	
Applicant	:	

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

**CONSOLIDATED NOTICE OF OPPOSITION**

1. Mylan Inc. ("Opposer"), a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and having a principal place of business at 1500 Corporate Drive, Suite 400, Canonsburg, Pennsylvania 15317, believes and alleges

that it will be damaged by registration of the marks shown in Serial Nos. 77/828,660 and 77/828,667 and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

2. On September 17, 2009, TEVA Pharmaceuticals USA, Inc. ("Applicant"), a Delaware corporation with a place of business at 1090 Horsham Road, North Wales, Pennsylvania 19454, filed intent-to-use applications, Serial Nos. 77/828,660 and 77/828,667, to register the marks EPINOW and EPIZIP, respectively, for use in connection with a "pharmaceutical preparation and substance for human use in the emergency treatment of anaphylaxis" in International Class 05 and "pharmaceutical injection device for human use in the treatment of anaphylaxis" in International Class 10 (the "Applications").

3. Opposer is the owner of, among others, the following U.S. trademark registrations ("EPIPEN Registrations") and applications (collectively, the marks in the EPIPEN Registrations and Mylan's applications are referred to hereinafter as the "EPIPEN Family of Marks"):

<b>Trademark</b>	<b>Reg./Serial No.</b>	<b>Reg./Filing Date</b>	<b>International Class - Goods</b>
EPIPEN	1,124,454	August 28, 1979	10 - hypodermic injectors
EPIPEN	1,479,294	March 8, 1988	05 - injectable pharmaceuticals for treatment of anaphylactic reactions to insect stings
EPIPEN JR. 2-PAK	2,576,013	June 4, 2002	05 - injectable pharmaceuticals for treatment of anaphylactic reactions to insect stings 10 - hypodermic injectors
EPIPEN 2-PAK	2,576,014	June 4, 2002	05 - injectable pharmaceuticals for treatment of anaphylactic reactions to insect stings 10 - hypodermic injectors
EPIPEN-READY	77/919,265	January 25, 2010	05 - injectable pharmaceuticals for treatment of anaphylactic reactions 10 - medical fluid injectors
EPIPEN PREPARED	77/919,257	January 25, 2010	05 - injectable pharmaceuticals for treatment of anaphylactic reactions 10 - medical fluid injectors

4. The EPIPEN Registrations have become incontestable as a matter of law under 15 U.S.C. §1065.

5. Opposer's ownership in the EPIPEN marks, Reg. Nos. 1,479,294, 2,576,013 and 2,576,014, results from the following chain of title:

<b>Assignment Type</b>	<b>Names</b>
Change of Name	From EM Industries, Inc. to EMD Chemicals Inc. (recorded at Reel 2560/Frame 0677)
Assignment of Entire Interest	From EMD Chemicals, Inc. to Mylan Laboratories, Inc. (recorded at Reel 3772/Frame 0028)
Change of Name	From Mylan Laboratories, Inc. to Mylan Inc. (recorded at Reel 3772/Frame 0082)

6. Opposer's ownership in the EPIPEN mark, Reg. No. 1,124,454, results from the following chain of title:

<b>Assignment Type</b>	<b>Names</b>
Assignment of Entire Interest	From Survival Technology, Inc. to EM Industries, Inc. (recorded at Reel 0381/Frame 0538)
Change of Name	From EM Industries, Inc. to EMD Chemicals Inc. (recorded at Reel 2560/Frame 0677)
Assignment of Entire Interest	From EMD Chemicals, Inc. to Mylan Laboratories, Inc. (recorded at Reel 3772/Frame 0028)
Change of Name	From Mylan Laboratories, Inc. to Mylan Inc. (recorded at Reel 3772/Frame 0082)

7. Since at least as early as 1978, Opposer, through it and its predecessors, has been, and is now, using the EPIPEN mark throughout the United States in connection with auto-injectors and injectable pharmaceuticals for treatment of anaphylactic reactions.

8. Opposer's use of the EPIPEN mark has been valid and continuous since its date of first use.

9. Opposer's EPIPEN mark is symbolic of extensive goodwill established by Opposer, has acquired a high degree of recognition and fame through continued use and expenditures of time, effort and money in advertising and promotion, and serves as a unique identifier of the goods offered by Opposer.

10. Opposer's use of the EPIPEN mark predates Applicant's filing date of the Applications.

11. Opposer's EPIPEN mark was well-established and famous long before the filing date of the Applications.

12. Applicant's EPINOW and EPIZIP marks are confusingly similar to the EPIPEN Family of Marks.

13. Applicant's pharmaceutical injection devices are used for the same indications as Opposer's auto-injectors and Applicant's pharmaceutical preparations for treatment of anaphylaxis are identical to Opposer's injectable pharmaceuticals for treatment of anaphylactic reactions.

14. Upon information and belief, the goods with which Applicant intends to use the EPINOW and EPIZIP marks, as claimed in the Applications, and the products with which Opposer uses the EPIPEN Family of Marks are or will be offered for sale and sold through the same channels of trade and offered and sold to the same customers.

**COUNT I**  
**LIKELIHOOD OF CONFUSION**

15. Opposer hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1 through 14.

16. The dates of first use of the EPIPEN marks and the application filing dates for the EPIPEN Registrations are prior to the date of filing of the Applications.

17. The EPIPEN Registrations are valid and subsisting and are *prima facie* evidence of Opposer's exclusive right to use the EPIPEN marks in commerce on the goods specified in such registrations.

18. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, Applicant's EPINOW and EPIZIP marks so resemble Opposer's EPIPEN marks, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to

cause mistake, or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

19. Opposer is, or will be, damaged by the registration of Applicant's EPINOW and EPIZIP marks, since, by virtue of such registrations, (1) Applicant's use of the marks is likely to cause confusion, to cause mistake or to deceive the consuming public as to the source, sponsorship or affiliation of Applicant's goods; (2) Applicant's use of the marks will dilute the strength and distinctive quality of Opposer's famous EPIPEN Family of Marks and its rights therein; and (3) doubts would be raised as to the exclusive right of Opposer to use the EPIPEN Family of Marks.

**WHEREFORE**, Opposer Mylan Inc. respectfully requests that this consolidated opposition be sustained against the Applications, and that the U.S. Patent & Trademark Office refuse to register Applicant's EPINOW and EPIZIP marks.

A duplicate copy of this Consolidated Notice of Opposition and the fee required by §2.6(a)(17) are enclosed herewith.

McNEES WALLACE & NURICK LLC

By 

Harvey Freedenberg  
Rebecca A. Finkenbinder  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000

Dated: April 30 2010

Attorneys for Opposer  
Mylan Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a true and correct copy of the **Consolidated Notice of Opposition** was mailed via First Class Mail, postage prepaid, to:

Lisa A. Pieroni, Esquire  
Kirschstein, Israel, Schiffmiller & Pieroni, P.C.  
425 Fifth Avenue, 5<sup>th</sup> Floor  
New York, N.Y. 10016-2223



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Rebecca A. Finkenbinder  
Of Counsel for Opposer  
Mylan Inc.

Dated: April 30, 2010