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

Proceeding	91194703
Party	Defendant TEVA Pharmaceuticals USA, Inc.
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Date	07/09/2010
Attachments	answer opp. 91194703.pdf (4 pages)(146870 bytes)

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

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Mylan, Inc.,
Opposer,

v. Opposition No. 91194703

Teva Pharmaceuticals USA, Inc.,
Applicant.

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ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION

TO THE COMMISSIONER OF PATENTS
AND TRADEMARKS:

Applicant Teva Pharmaceuticals USA, Inc. hereby answers each of Opposer's allegations contained in the Consolidated Notice of Opposition ("Notice of Opposition") as follows:

1. With respect to the allegations of paragraph 1 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations stated therein.

2. Applicant admits the allegations stated in paragraph 2 of the Notice of Opposition.

3. With respect to the allegations of paragraph 3, Applicant admits that the Registration Nos. stated therein coincide with the stated trademarks and issue dates of said registrations but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

4-9. With respect to the allegations of paragraphs 4 through 9 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations stated therein

10. Applicant admits the allegations stated in paragraph 10 of the Notice of Opposition.

11. With respect to the allegations of paragraph 11 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations stated therein.

12. Applicant denies the allegations stated in paragraph 12 of the Notice of Opposition.

13 & 14. With respect to the allegations of paragraphs 13 and 14 of the Notice of

Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations stated therein.

15. Applicant incorporates by reference its answers to the allegations set forth in paragraphs 1 through 14, supra.

16. Applicant admits the allegations stated in paragraph 16 of the Notice of Opposition.

17. With respect to the allegations of paragraph 17 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations stated therein.

18 & 19. Applicant denies the allegations stated in paragraphs 18 and 19 of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

20. The only element in common between Opposer's EPIPEN Marks and Applicant's trademarks EPINOW and EPIZIP is the prefix "Epi." "Epi" is widely and commonly used in the medical literature and in medical practice as a shorthand identifier for (and is synonymous with) epinephrine. Opposer has no right to monopolize the highly descriptive or generic identifier "Epi" for epinephrine-containing products used in the emergency treatment of anaphylaxis.

SECOND AFFIRMATIVE DEFENSE

21. Applicant repeats and realleges the allegations of paragraph 20 above as if the same were set forth herein.

22. Applicant's trademarks EPINOW and EPIZIP comprise the highly descriptive or generic identifier "Epi" together with the respective suffixes "Now" and "Zip." Neither of these suffixes bears any resemblance, visually, audially or in connotation, to "Pen," the suffix used in Opposer's EPIPEN Marks. As a result of the completely different suffixes used in the respective marks of the parties joined to the highly descriptive or generic identifier "Epi," the respective marks viewed as a whole are not likely to cause confusion, mistake or deception of the public as to the source or sponsorship of the parties' goods.

THIRD AFFIRMATIVE DEFENSE

23. Applicant repeats and realleges the allegations of paragraphs 20 through 23 above as if the same were set forth herein.

24. The present opposition should be dismissed as a result of Opposer's unclean hands in seeking to monopolize the use of the highly descriptive or generic identifier "Epi" as the prefix for marks applied to epinephrine-containing products used in the emergency treatment of anaphylaxis, giving Opposer an unfair advantage and suppressing effective competition in the relevant market for such products.

WHEREFORE, Applicant prays that the Opposition be dismissed and that Application Serial Nos. 77/828,660 and 77/828,667 be allowed to proceed to registration.

Respectfully submitted,

KIRSCHSTEIN, ISRAEL,
SCHIFFMILLER & PIERONI, P.C.

By: _____

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Dated: New York, New York
July 9, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Answer to Notice of Opposition was served upon counsel for Opposer, Rebecca A. Finkenbinder, Esq., by e-mail this 9th day of July 2010 at rfinkenbinder@mwn.com.

Lisa A. Pieroni

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