

ESTTA Tracking number: **ESTTA373422**

Filing date: **10/15/2010**

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 parties oppose registration of the indicated application.

Opposers Information

Name	IPSEN S.A.
Granted to Date of previous extension	10/17/2010
Address	65 QUAI GEORGES GORSE BOULOGNE BILLANCOURT, 92100 FRANCE

Name	Ipsen Pharma S.A.S.		
Entity	soci�t� par actions simplifi�e	Citizenship	FRANCE
Address	65 quai Georges Gorse Boulougne Billancourt, F-92100 FRANCE		

Attorney information	G MATHEW LOMBARD LOMBARD & GELIEBTER LLP 230 PARK AVE 10 FL NEW YORK, NY 10169 UNITED STATES mlombard@lgtrademark.com Phone:917.779.9967
----------------------	---

Applicant Information

Application No	77877761	Publication date	04/20/2010
Opposition Filing Date	10/15/2010	Opposition Period Ends	10/17/2010
Applicant	Mylan Pharmaceuticals, Inc. P.O. Box 4310 Morgantown, WV 26505 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Oral contraceptives
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Opposer as Basis for Opposition

U.S. Registration	3784942	Application Date	03/19/2009
-------------------	---------	------------------	------------

No.			
Registration Date	05/04/2010	Foreign Priority Date	09/25/2008
Word Mark	IPSATE		
Design Mark	IPSATE		
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: Pharmaceutical preparations, namely, pharmaceutical preparations for use in the treatment of oncological diseases, pharmaceutical preparations for use in the treatment of neurological diseases, pharmaceutical preparations for use in the treatment of endocrine disorders, pharmaceutical preparations for use in the treatment of urological diseases, pharmaceutical preparations for use in the treatment of hormonal disorders, pharmaceutical preparations for the treatment of gastrointestinal bleeding disorders, pharmaceutical preparations for use in the treatment of hematological diseases, pharmaceutical preparations for use in the treatment of blood disorders, pharmaceutical preparations for use in the treatment of blood plasma disorders, pharmaceutical preparations for use in the treatment of coagulation disorders; Veterinary preparations, namely, veterinary preparations for the treatment of gastrointestinal bleeding disorders, veterinary preparations for use in the treatment of hematological disorders; veterinary preparations for use in the treatment of blood disorders, veterinary preparations for use in the treatment of blood plasma disorders, veterinary preparations for use in the treatment of coagulation disorders</p>		

Attachments	79067203#TMSN.jpeg (1 page)(bytes) 1979v2.pdf (6 pages)(51078 bytes) Cert_of_Service.pdf (1 page)(13410 bytes)
-------------	--

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	/g mathew lombard/
Name	G MATHEW LOMBARD
Date	10/15/2010

**IN THE U.S. PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

In the matter of Application Serial No. 77877761
Published in the *Official Gazette* of April 20, 2010

Atty Ref.: 116.0901

IPSEN PHARMA S.A.S.,

– and –

IPSEN S.A.,

Opposers,

v.

MYLAN PHARMACEUTICALS, INC.,

Applicant.

Opposition No. _____

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Attn: **BOX TTAB FEE**

NOTICE OF OPPOSITION

IPSEN PHARMA S.A.S., a French société par actions simplifiée, with a business address of 65 quai Georges Gorse, Boulogne Billancourt, F-92100, FRANCE, and **IPSEN S.A.**, a French société anonyme, with a business address of 65 quai Georges Gorse, Boulogne Billancourt, F-92100, FRANCE (hereinafter, collectively, “Opposer”), believe that they will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 77877761, filed November 20, 2009, by **MYLAN PHARMACEUTICALS, INC.** (hereinafter “Applicant”) and, hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer, Ipsen Pharma S.A.S., is a leading global pharmaceutical company and is in the business of researching, manufacturing and selling high-quality pharmaceutical products at the interstate and international levels.

2. Opposer, Ipsen S.A., is a leading global pharmaceutical company and is in the business of researching, manufacturing and selling high-quality pharmaceutical products at the interstate and international levels.

3. Ipsen S.A. is Ipsen Pharma S.A.S.'s parent company, owning 100% of the shares of Ipsen Pharma S.A.S. Accordingly, Ipsen Pharma S.A.S. is joined in this proceeding as an interested party in privity with Ipsen S.A., both of whom have an interest and stake in the outcome of this proceeding. The parties, for the sake of ease, are referred to herein, individually or collectively, as appropriate, as "Opposer".

4. On information and belief, Applicant, Mylan Pharmaceuticals, Inc., is a West Virginia corporation, with an address of P.O. Box 4310, Morgantown, West Virginia 26505, USA or 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, USA.

5. Opposer is the owner of U.S. Registration No. 3784942 covering the mark **IPSATE** for *pharmaceutical preparations, namely, pharmaceutical preparations for use in the treatment of oncological diseases, pharmaceutical preparations for use in the treatment of neurological diseases, pharmaceutical preparations for use in the treatment of endocrine disorders, pharmaceutical preparations for use in the treatment of urological diseases, pharmaceutical preparations for use in the treatment of hormonal disorders, pharmaceutical preparations for the treatment of gastrointestinal bleeding disorders, pharmaceutical preparations for use in the treatment of hematological diseases, pharmaceutical preparations for use in the treatment of blood disorders,*

pharmaceutical preparations for use in the treatment of blood plasma disorders, pharmaceutical preparations for use in the treatment of coagulation disorders; veterinary preparations, namely, veterinary preparations for the treatment of gastrointestinal bleeding disorders, veterinary preparations for use in the treatment of hematological disorders; veterinary preparations for use in the treatment of blood disorders, veterinary preparations for use in the treatment of blood plasma disorders, veterinary preparations for use in the treatment of coagulation disorders in Class 5. The application which resulted in the issuance of Reg. No. 3784942, Application Serial No. 79067203, was filed on March 19, 2009 based on § 66A as a Madrid Protocol designation, with a priority date of September 25, 2008. Application Serial No. 79067203 was published for opposition on February 16, 2010, and a certificate of registration issued on May 4, 2010.

6. On November 20, 2009, Applicant filed a §1(b) intent-to-use application in the United States Patent and Trademark Office, Serial No. 77877761, for registration on the Principal Register of the trademark **IPSIA** for *oral contraceptives* in International Class 5.

7. On information and belief, Applicant has not – and has never – used its alleged **IPSIA** mark for any product(s) or service(s) prior to November 20, 2009.

8. On information and belief, Applicant has not – and has never – used its alleged **IPSIA** mark for any product(s) or service(s) prior to September 25, 2008.

9. There is no issue of priority since the filing date of Applicant's aforementioned trademark application is subsequent to both the actual filing date of Opposer's aforementioned application (and resulting registration) and to Opposer's priority filing date of September 25, 2008.

10. On information and belief, Applicant did not use its alleged trademark **IPSIA** anywhere in the United States, or in commerce, prior to the above-mentioned filing date(s).

11. On information and belief, Applicant's products, namely, oral contraceptives are comprised of or otherwise contain hormones or hormone products.

12. On information and belief, Applicant's products, namely, oral contraceptives act upon or otherwise affect the human hormonal system.

13. Opposer's identification of goods includes "pharmaceutical preparations for use in the treatment of hormonal disorders".

14. Opposer's identification of goods includes "pharmaceutical preparations for use in the treatment of endocrine disorders".

15. Endocrine diseases and disorders are frequently treated with hormone supplementation or with products that suppress the manufacture or release of hormones by the human body.

16. Applicant's alleged trademark is so similar to Opposer's registered trademark in sound, appearance and/or commercial impression so as to be likely to cause confusion, mistake or deception.

17. Opposer's pleaded goods in Class 5 and the Applicant's goods in Class 5 are identical, similar and/or closely related.

18. When the respective parties' goods are identical, a lesser degree of similarity between the marks is necessary to support a finding of likely confusion. *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700-01 (Fed. Cir. 1992) ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.")

19. Opposer's pleaded goods in Class 5 and the Applicant's goods in Class 5 would/will target the same class of purchasers.

20. Applicant's appropriation of Opposer's mark for Class 5 goods would undoubtedly cause confusion, mistake or deception among the relevant consumers.

21. Opposer's pleaded goods in Class 5 and the Applicant's goods in Class 5 are closely related and would be sold and/or promoted through the same channels of trade to the same classes of purchasers and users.

22. Applicant's alleged trademark is likely to cause confusion, mistake or deception of purchasers as to the respective marks, and also as to the source of origin or sponsorship of the goods for which such marks are used.

23. Inasmuch as both Opposer and Applicant market pharmaceutical products and as both Opposer and Applicant market hormone products, there is significant market interface between Opposer and Applicant.

24. Applicant's alleged trademark is calculated or likely to cause irreparable loss, injury and damage to Opposer's business, Opposer's registered trademark, and to the goodwill appertaining thereto.

25. Applicant's alleged trademark is a colorable imitation or misappropriation of Opposer's pleaded trademark, and the concurrent use of both marks would be likely to cause confusion, mistake or deception.

26. Opposer's **IPSATE** mark is distinctive and represents an extremely valuable asset of its business.

27. The use by Applicant of its mark for the applied-for goods is likely to create the erroneous impression that Applicant's goods originate with, are sponsored or promoted by, come from, or are otherwise associated with Opposer or Opposer's goods provided under the **IPSATE** mark or that Applicant's goods are endorsed, sponsored, or in some way connected with Opposer,

which they are not. Any use of Applicant's marks by the Applicant is, therefore, likely to cause confusion, cause mistake or to deceive the public into the belief that the products offered under Applicant's **IPSIA** mark come from or are otherwise authorized or sponsored by Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

28. Applicant selected, adopted and applied to register its alleged trademarks without the consent of Opposer.

29. Accordingly, any registration of the mark **IPSIA** in Class 5 would cause harm to Opposer.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 77877761 be **DENIED**.

Respectfully submitted,

IPSEN PHARMA S.A.S.

Dated: October 15, 2010

By: _____


G. Mathew Lombard

Darren M. Geliebter

LOMBARD & GELIEBTER LLP

230 Park Avenue

10th Floor

New York, New York 10169

917.779.9967

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF OPPOSITION was served on counsel for Applicant by first class mail this **15th day of October 2010**:

Michael A. Doctrow, Esq.
MCNEES WALLACE & NURICK LLC
100 Pine St.
Harrisburg, PA 17101-1200



G. Mathew Lombard

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF OPPOSITION was served on counsel for Applicant by first class mail this **15th day of October 2010**:

Michael A. Doctrow, Esq.
MCNEES WALLACE & NURICK LLC
100 Pine St.
Harrisburg, PA 17101-1200



G. Mathew Lombard