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

<b>Proceeding</b>	91162705
<b>Party</b>	Defendant Erbe Elektromedizin GmbH Erbe Elektromedizin GmbH Waldhornlestrasse 17 DEX Tubingen, 72072
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<b>Submission</b>	Answer
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<b>Date</b>	12/06/2004
<b>Attachments</b>	Ans NOO.pdf ( 7 pages )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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<b>Sherwood Services AG,</b>	)	
	)	
<b>Opposer,</b>	)	<b>Opposition No. 91162705</b>
	)	<b>Serial No.: 78/152,771</b>
v.	)	<b>Mark: FORCEDAPC</b>
	)	
<b>Erbe Elektromedizin GmbH,</b>	)	
	)	
<b>Applicant.</b>	)	
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**ANSWER TO NOTICE OF OPPOSITION**

In the matter of application Serial No. 78/152,771 for registration of the mark “FORCEDAPC” by Erbe Elektromedizin GmbH (hereinafter “Applicant”), which was published in the Official Gazette on June 15, 2004, Applicant hereby submits its Answer to the Notice of Opposition filed by Sherwood Services AG (“Opposer” or “Sherwood”) in the above-referenced action as follows:

1. On August 9, 2002, Applicant applied to register the mark FORCEDAPC. Applicant’s mark was published in the *Official Gazette* on June 15, 2004. As published, Applicant’s application covers “high frequency system consisting of high frequency device for cutting, coagulating, vaporizing and devitalizing of tissue for medical and surgical purposes” in International Class 10.

**ANSWER**

Admitted.

2. Through its predecessors and licensees, Opposer has used a family of FORCE marks as trademarks in connection with surgical appliances and instruments in the United States since at least as early as November 1, 1984 (the “FORCE Marks”).

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**ANSWER**

Applicant is without sufficient information or knowledge to form a belief with respect to the truth or falsity of the allegations in this paragraph and therefore denies same.

3. Opposer owns the following federal registrations of its FORCE Marks:
  - a. FORCE FX (Reg. No. 2,101,509) for “electrosurgical generator” in International Class 10; and
  - b. FORCE EZ (Reg. No. 2,157,692) for “electrosurgical generator” in International Class 10.

**ANSWER**

Applicant admits that the USPTO’s online TARR database indicates Opposer owns the federal registrations identified in subparts (a) and (b) of Paragraph 3, and that those registrations cover the goods identified in those subparts, but Applicant denies that the two registrations in subparts (a) and (b) constitute a “family” of “FORCE marks” and denies any remaining allegations of Paragraph 3.

4. Registration No. 2,157,692 is incontestable and constitutes conclusive evidence of Opposer’s exclusive right to use the registered mark in commerce in connection with the goods specified in that registration. Registration No. 2,101,509 constitutes *prima facie* evidence of Opposer’s exclusive right to use the registered mark in commerce in connection with the goods specified in that registration.

**ANSWER**

Applicant admits that the USPTO’s online TARR database indicates that Section 8 and 15 affidavits have been accepted and acknowledged with respect to Registration No. 2,157,692, and that Registration No. 2,101,509 is an active registration. Without verification of same,

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Applicant is without sufficient information or knowledge to form a belief with respect to the truth or falsity of the remaining allegations in this paragraph and therefore denies same.

5. Through its predecessors and licensees, Opposer has used the mark FORCE in the United States in connection with “electrosurgical generators” since at least as early as November 1, 1984.

**ANSWER**

Applicant is without sufficient information or knowledge to form a belief with respect to the truth or falsity of the allegations in this paragraph and therefore denies same.

6. Opposer owns a recently canceled federal registration of the mark FORCE GSU (Reg. No. 1,735,652) for “argon gas enhanced cutting and coagulating surgical unit, comprising a console, generator, hand piece and gas containers,” evidencing a date of first use in the United States of May 31, 1991. Opposer continues to use the FORCE GSU mark in the United States in connection with “argo gas enhanced cutting and coagulating surgical unit, comprising a console, generator, hand piece and gas containers.”

**ANSWER**

Applicant admits that the USPTO’s online TARR database indicates Opposer owned a now-cancelled federal registration for the mark FORCE GSU (Reg. No. 1,735,652) for “argon gas enhanced cutting and coagulating surgical unit, comprising a console, generator, hand piece and gas containers,” which registration claimed a date of first use in the United States of May 31, 1991. Applicant denies that the cancellation of this registration was recent, since the registration was cancelled on August 30, 2003. Applicant is without sufficient information or knowledge to form a belief with respect to the truth or falsity of the remaining allegations in this paragraph and therefore denies same.

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7. By virtue of continuous use of the FORCE Marks by Opposer and its predecessors and licensees since at least as early as November 1, 1984, and the fame associated with the FORCE Marks, Opposer is also the owner of extensive common law rights in and to the FORCE Marks.

**ANSWER**

Denied.

8. Opposer's FORCE Marks are symbolic of the extensive goodwill and recognition established and developed by Opposer and its predecessors and licensees as a result of the use of the FORCE Marks in connection with surgical appliances and instruments since at least as early as November 1, 1984, and through Opposer's and its licensees' expenditure of substantial amounts of time, money, and effort in advertising and promoting its products.

**ANSWER**

Denied.

9. Opposer's FORCE Marks have acquired a high degree of recognition, fame, and distinctiveness throughout the United States as a symbol of the quality of the products associated with Opposer. The relevant public is uniquely aware of and identifies Opposer's FORCE Marks with Opposer and its licensees, and the relevant public understands the products sold under Opposer's FORCE Marks to be uniquely those of Opposer and its licensees.

**ANSWER**

Denied.

10. Applicant's mark FORCEDAPC is confusingly similar to Opposer's FORCE Marks. Both parties' marks begin with the term FORCE, and several of Opposer's FORCE Marks and Applicant's mark follow the FORCE portion of the mark with a short letter string.

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**ANSWER**

Applicant admits that its mark FORCEDAPC begins with the letters FORCE. Applicant denies its mark FORCEDAPC is confusingly similar to any of Opposer's marks, and denies all remaining allegations in Paragraph 10.

11. The goods identified in Applicant's application and the goods sold under Opposer's FORCE Marks are identical or closely related for at least the following reasons: (1) the parties' respective goods both fall in International Class 10; (2) the parties' respective goods both encompass surgical devices or instruments; (3) the parties' respective goods are intended for use in connection with cutting and coagulating of tissue; and (4) the parties' respective goods are both sold to medical professionals.

**ANSWER**

Applicant is without sufficient information or knowledge to form a belief with respect to the truth or falsity of the allegations in this paragraph and therefore denies same.

12. Persons familiar with Opposer's FORCE Marks or the products sold under those marks would be likely to believe erroneously that Applicant's FORCEDAPC products are provided by Opposer or are authorized, licensed, endorsed, or sponsored by Opposer, and the registration of Applicant's mark on the Principal Register would be inconsistent with Opposer's rights in Opposer's FORCE Marks.

**ANSWER**

Denied.

13. Opposer will be damaged by registration of the mark FORCEDAPC by Applicant because the mark so resembles each of Opposer's FORCE Marks as to be likely to cause confusion, mistake, or deception.

**ANSWER**

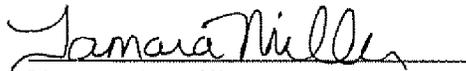
Denied.

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WHEREFORE, Applicant prays that the Opposition against its U.S. trademark application for "FORCEDAPC" be dismissed.

Date: Dec. 6, 2004

Respectfully submitted,



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**CERTIFICATE OF ELECTRONIC TRANSMISSION AND SERVICE BY MAIL**

I hereby certify that a copy of the attached **Answer to Notice of Opposition** was filed electronically with the Trademark Trial and Appeal Board on December 6, 2004, and was served on counsel for Opposer via the United States Postal Service First Class Mail, postage prepaid, on the date indicated below to the following address:

Theodore H. Davis Jr.  
Alex S. Fonoroff  
KILPATRICK STOCKTON LLP  
1100 Peachtree St., Suite 2800  
Atlanta, GA 30309

Date: Dec. 6, 2004

Lamare Miller