

ESTTA Tracking number: **ESTTA693414**

Filing date: **09/02/2015**

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	LEGO Juris A/S
Granted to Date of previous extension	09/02/2015
Address	Koldingvej 2 Billund, DK-7190 DENMARK

Attorney information	Laura Popp-Rosenberg Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES lpopp-rosenberg@fzlz.com Phone:(212) 813-5900
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Applicant Information

Application No	86462155	Publication date	05/05/2015
Opposition Filing Date	09/02/2015	Opposition Period Ends	09/02/2015
Applicant	IDENTITOY INC 32554 LAKE LOUISE ST FREMONT, CA 94555 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer hardware and software systems for interactive gaming
Class 028. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Positionable three dimensional toys for use in games

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
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Attachments	Notice of Opposition (IDENTIBRICK) (F1766249x96B9E).pdf(260806 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	/Laura Popp-Rosenberg/
Name	Laura Popp-Rosenberg
Date	09/02/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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LEGO JURIS A/S,	X	
	:	
<i>Opposer,</i>	:	
	:	
- against -	:	Opposition No.
	:	
IDENTITOY INC.,	:	
	:	
<i>Applicant.</i>	:	
	X	

Opposer LEGO Juris A/S (“Opposer) believes that it will be damaged by the issuance of a registration for the mark IDENTIBRICK, as applied for in Application Serial No. 86462155, and therefore opposes the same. As grounds for the opposition, Opposer, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Opposer and its predecessors, through licensees, have long sold and now sell, in commerce in the United States, construction toys and construction toy playsets containing interlocking plastic bricks in various configurations under the famous trademark LEGO.
2. Upon information and belief, applicant IdentiToy Inc. (“Applicant”) is a Wyoming corporation located and doing business at 32554 Lake Louise Street, Fremont, California, 94555.
3. Upon information and belief, on or about November 22, 2014, Applicant filed Application Serial No. 86462155 (the “Application”) to register the mark IDENTIBRICK on the basis of intent-to-use the mark in commerce, under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(a), for “computer hardware and software systems for interactive gaming” in International Class 9, and “positionable three dimensional toys for use in games” in International Class 28.

4. Upon information and belief, the term “brick” in the IDENTIBRICK mark refers to an interlocking plastic brick of the type sold by Opposer and third parties. This is clear from Applicant’s website (<http://www.identitoy.com>), which uses the mark IDENTIBRICK in connection with what is described as a “[c]rystal clear toy *brick* baseplate . . . [c]ompatible with the most popular 8 mm stud spacing toy *bricks*.” *See* Exhibit A (emphasis added).

5. Accordingly, in the context of the goods in connection with which the mark IDENTIBRICK is to be used, the term “brick” is descriptive.

6. That Applicant intended the term “brick” to make a separable commercial impression from the mark as a whole is clear from the initial application, which identified the mark as “IdentiBrick,” and also from Applicant’s website, where the mark is used in the form “IdentiBrick.” *See* Exhibit A.

7. The word “brick” is extensively used in a descriptive manner by Opposer’s licensees and by third parties in connection with goods and services consisting of or relating to interlocking plastic bricks.

8. Thus, the term “brick” in Applicant’s mark IDENTIBRICK cannot function as part of a trademark because it is descriptive of the goods of both Applicant and Applicant’s competitors, including Opposer’s licensees.

9. If the Application is allowed to mature to registration without a disclaimer of the term “brick,” Applicant will be granted rights in a descriptive term that should be freely available for use by Opposer and Opposer’s licensees, as well as other competitors of Applicant.

10. Registration to Applicant of the mark IDENTIBRICK without a disclaimer of the term “brick” would violate 15 U.S.C. § 1052(e) and harm Opposer by giving Applicant presumptive exclusivity in and to a term widely in use by others, including Opposer, thereby

impairing Opposer's and Opposer's licensee's ability to use this common, descriptive term in connection with their products and businesses.

11. By reason of the foregoing, Opposer is likely to be harmed by registration of the mark IDENTIBRICK without disclaimer of the descriptive term "brick."

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Applicant be denied.

Dated: New York, New York
September 2, 2015

Fross Zelnick Lehrman & Zissu, P.C.

By: 

Laura Popp-Rosenberg

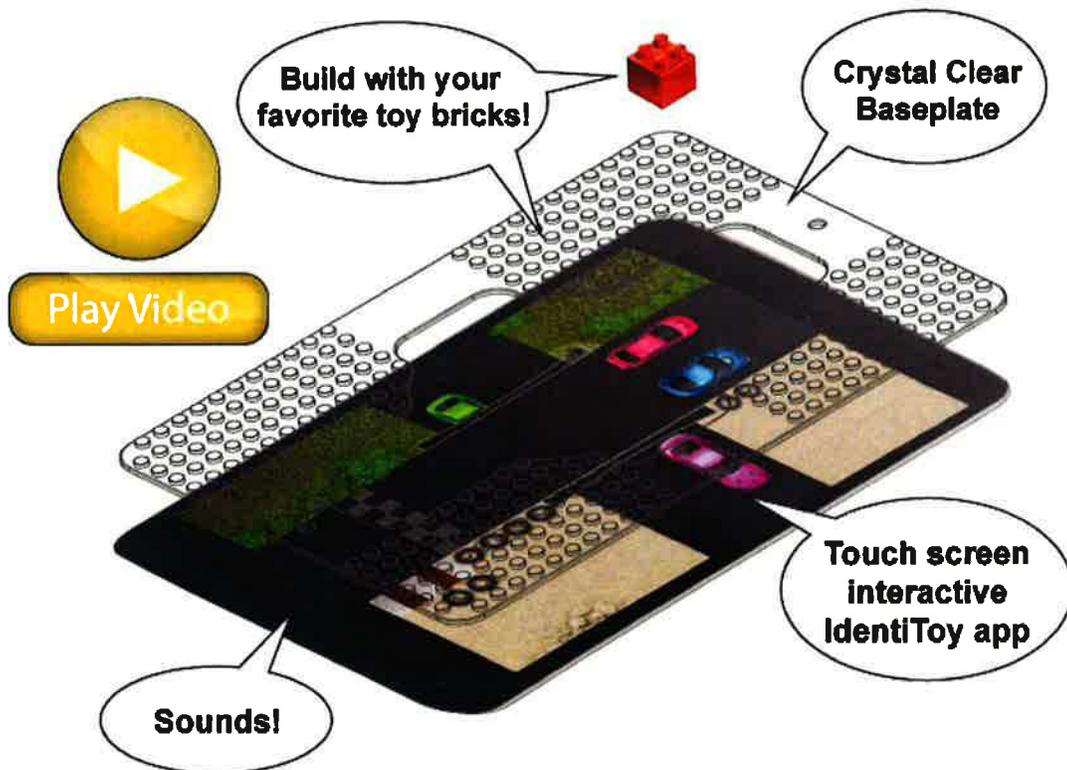
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Attorneys for Opposer LEGO Juris A/S

EXHIBIT A



Menu



IdentiBrick™ Baseplate

Crystal clear toy brick baseplate for use with the IdentiToy™ **iOS App** and **Android App**. Compatible with the most popular 8 mm stud spacing toy bricks.

Dimensions:

Height: 9.45 in

Width: 6.3 in

\$14.99

\$9.99 Introductory Price!

Shipping: \$2.99 Domestic
\$9.99 International

\$9.99 - Qty 1 IdentiBrick Baseplate

 Pay with Amazon



Bring your toy brick building experience to the next level! The trans-clear baseplate can create any image or color beneath it. Need a gray baseplate or a green baseplate? It's just a click away. A water scene with a blue building plate? No problem! Building plates with painted images can be replaced by the IdentiToy baseplate with a custom landscape running on a Tablet PC below.

The image that shines through the building plate consists of a background image and a foreground image. The background image can be a solid color such as grey, blue, pink, or green or a texture such as asphalt, sand, or grass. Foreground images can be beach umbrellas, bushes, railroad tracks, and more. Go beyond traditional green or blue baseplates! IdentiToy - A New Way to Play!

Navigation

- Home
- Technology
 - Gallery
 - Advantages
 - Technical
- Products
- Contact Us

Contact

7100 Stevenson Blvd
Fremont, CA 94538
info@identitoy.com

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2015, I caused a true and correct copy of the foregoing Notice of Opposition to be sent by pre-paid First Class U.S. mail upon the Applicant at the correspondence address of record: IdentiToy Inc., 32554 Lake Louise St., Fremont, CA 94555.



Laura Popp-Rosenberg