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Filing date: **08/23/2004**

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

Proceeding	91154894
Party	Defendant Einstein Medical, Inc. Einstein Medical, Inc. 5699 La Jolla Blvd. La Jolla, CA 92037
Correspondence Address	JOHN W. CRITTENDEN COOLEY GODWARD LLP ONE MARITIME PLAZA SAN FRANCISCO, CA 94111-3580
Submission	Answer
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Date	08/23/2004
Attachments	hebrew.pdf (4 pages)

Certificate of E-Mail

I hereby certify that this correspondence is being transmitted by electronic mail on August 23, 2004 to: BOX TTAB, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202.

Michael Gray (Name)

August 23, 2004 (Date)

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

In the matter of application Serial No. 76/041,565
For the Trademark E12 EINSTEIN INDUSTRIES and Design
Published in the Official Gazette on May 8, 2001

The Hebrew University of Jerusalem

Opposer,

v.

Einstein Industries, Inc.,

Applicant.

Opposition No. 91154894

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202

ANSWER TO NOTICE OF OPPOSITION

Einstein Industries, Inc., Applicant by Assignment from Einstein Medical, Inc. filed and recorded with the PTO on April 24, 2002 at Reel/Frame: 2501/0413, ("Applicant"), by and through its attorneys, Cooley Godward LLP, One Maritime Plaza, San Francisco, California 94111-3580, hereby answers the Notice of Opposition of Opposer Hebrew University of Jerusalem ("Opposer") in this matter. Applicant responds to the numbered paragraphs of the Notice of Opposition as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Notice of Opposition, and on that basis denies same.

2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Notice of Opposition, and on that basis denies same.

3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Notice of Opposition, and on that basis denies same.

4. Applicant admits that it has applied to register, under Serial No. 76/041,565, the mark EI2 EINSTEIN INDUSTRIES, INC. and Design for the following services: business marketing and consulting services provided over the global on-line network. Except as so expressly admitted, Applicant denies the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations in Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

To the extent Opposer had any trademark rights in the term EINSTEIN that could have given rise to a likelihood of confusion with Applicant's mark, it has abandoned such rights.

SECOND AFFIRMATIVE DEFENSE

Applicant has priority of usage of its mark over Opposer with respect to the competitive market for the services covered by Applicant's application, namely business marketing and consulting services provided over the global on-line network.

THIRD AFFIRMATIVE DEFENSE

There is no likelihood of confusion because the services covered by Applicant's application are unrelated to Opposer's goods and services.

FOURTH AFFIRMATIVE DEFENSE

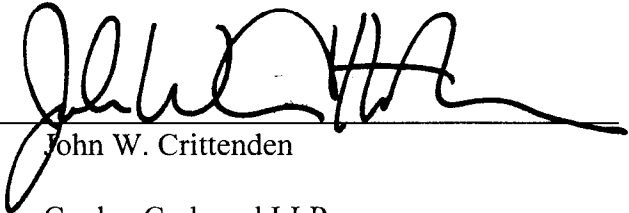
Opposer's opposition to Applicant's registration of its mark is barred by the doctrine of laches.

Date: August 23, 2004

Respectfully submitted,

COOLEY GODWARD LLP

By: _____


John W. Crittenden

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on **August 23, 2004**, a true and correct copy of the foregoing Answer to Notice of Opposition was placed in the United States Mail, postage prepaid, addressed to Robert Alpert, Ladas & Parry, 26 West 61st Street, New York, New York 10023-7604.

