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

Proceeding	91169773
Party	Defendant AirCell, Inc. AirCell, Inc. Building B, Suite 280 1172 Century Drive Louisville, CO 80027
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Date	04/19/2006
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTER-TEL, INC.		Opposer,	}	
			}	Applicant's Answer and Affirmative Defenses to Notice of Opposition
v.			}	
AIRCELL, INC.		Applicant.	}	Opposition No. 91169773 Application Serial No. 78/595,026 Date: April 19, 2006

BOX TTAB
NO FEE
Commissioner for Trademarks
PO BOX 1451
Alexandria, VA 22313-1451

ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant, AirCell, Inc., answers the Notice of Opposition as follows. Each paragraph of the Answer corresponds to the corresponding paragraph of the Notice of Opposition.

1. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 1 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
2. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 2 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
3. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 3 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.

4. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 4 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
5. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 5 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
6. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 6 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
7. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 7 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
8. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 8 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
9. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 9 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
10. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 10 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.
11. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 11 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.

12. Applicant lacks knowledge and information sufficient to form a belief regarding the allegations in paragraph 12 of the Notice of Opposition, and therefore denies same leaving Opposer to strict proof thereof.

13. Responding to the allegations contained in paragraph 13 of the Notice of Opposition, Applicant admits that it filed Application Serial No. 78/595,026 to register the mark AIRCELL AXXESS on March 25, 2005. As published for opposition, the services recited in this application are “communication services to and from aircraft, namely transmission of voice, video, and data between aircraft and ground.” Responding to the allegations contained in paragraph 13 of the Notice of Opposition, Applicant specifically denies the last sentence thereof. Applicant further denies that Opposer’s allegation that Applicant’s AIRCELL AXXESS mark is in the “identical field of industry for which Inter-Tel has superior rights in the AXXESS mark” is fair and accurate.

14. Applicant denies the allegations contained in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations contained in paragraph 18 of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

19. The Notice of Opposition fails to adequately state claims upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

20. Applicant alleges that the reasonably prudent buyer would not be likely to associate AIRCELL AXXESS when used in connection with “communication services to and from aircraft, namely transmission of voice, video, and data between aircraft and ground” with Opposer’s mark AXXESS when used in connection with private branch exchange consoles and computer software for managing telephone exchanges.

WHEREFORE, Applicant, AirCell, Inc., requests that the captioned Opposition be dismissed with prejudice, and that the U.S. Patent and Trademark Office issue a Notice of Allowance for Application Serial No. 78/595,026.

Respectfully submitted,
Attorneys for Applicant
AIRCELL, INC.

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Certificate of Service

I hereby certify that on this 10th day of April, 2006, a true and correct courtesy copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION** is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

Michelle Whittington, Esq.
Corporate Intellectual Property Counsel
Inter-Tel, Inc.
7300 W. Boston St.
Chandler, AZ 85226

By: Sharon Segraves
Sharon Segraves