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

Proceeding	91230162
Party	Defendant Axxess Technology Solutions Inc.
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Date	10/14/2016
Attachments	ANSWER Epic Systems TM Opposition POWERING CARE EVERY-WHERE.pdf(25479 bytes)

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

Epic Systems Corporation,)	
)	Opposition No. 91230162
Opposer,)	
)	U.S. App. Serial No. 86/857155
v.)	
)	Mark: POWERING CARE EVERYWHERE
Axxess Technology Solutions, Inc.,)	
)	
Applicant.)	

ANSWER AND AFFIRMATIVE DEFENSES

Axxess Technology Solutions, Inc. (“Applicant”) hereby answers the Opposition of Epic Systems Corporation (“Opposer”). Applicant responds to the recital and numbered paragraphs in the Opposition, as follows:

First Recital Paragraph: Applicant admits that the subject Application Serial No. 86/857,155 for the mark POWERING CARE EVERYWHERE (the “Application”) is filed in the name of Applicant, but otherwise denies the allegations of damages and other claims set forth in this paragraph of the Opposition.

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

8. Denied.

9. Denied

10. Denied.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

12. Applicant denies that the general public has come to widely recognize the CARE EVERYWHERE mark as being associated with a single source. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

13. Applicant denies that Opposer's CARE EVERYWHERE mark is distinctive. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph of the Opposition and therefore denies those allegations.

15. Applicant admits that the U.S. Patent and Trademark Office ("USPTO") records show Opposer as the record owner of United States Trademark Registration No. 2,964,155 ("Opposer's Registered Mark"); however, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

16. Applicant admits that the USPTO records show the enumerated list of goods being the subject of Opposer's Registered Mark as set forth in this paragraph of the Opposition; however, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

17. Applicant admits that the USPTO records show a notice of acceptance and acknowledgement of Section 8 & 15 declaration for Opposer's Register Mark on or about June 14, 2011; however, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Denied.

25. Admitted.

26. Applicant admits that, prior to the publication of the Application, Opposer's counsel contacted Applicant's counsel to discuss Applicant's exact use of the mark POWERING CARE EVERYWHERE, the filing of an extension of time to oppose the Application, and Opposer' stated concerns as to likelihood of confusion and Applicant promptly informed Opposer that Applicant believed that its use and registration of the mark POWERING CARE EVERYWHERE was not likely to cause confusion in the marketplace, particularly based upon the USPTO's ruling on Section 2(d) in the Application and Applicant was not opposed to an amicable resolution of this matter, and Applicant requested a reasonable proposal from Opposer. Prior to publication and the filing of this petition,

Opposer proposed Applicant's filing of an express abandonment of the Application as the only means of resolution of this matter and Applicant did not accept such offer. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Applicant admits that it is not affiliated with, connected with, or endorsed or sponsored by Opposer; however, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

35. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph of the Opposition and therefore denies those allegations.

36. Denied.

37. Denied.

38. Denied

AFFIRMATIVE DEFENSES

1. Opposer's claims are barred by the doctrine of laches.
2. Opposer's claims are barred by the doctrine of acquiescence.
3. Opposer's claims are barred by the doctrine of estoppel.
4. Opposer's claims are barred by the doctrine of unprotectability in that Opposer's Registered

Mark is unprotectable in that it is not distinctive, it lack secondary meaning, is descriptive, is generic and/or is not likely to confuse consumers about the origin of Applicant's services.

5. Applicant's registration and use of the mark POWERING CARE EVERYWHERE is sufficiently different from Opposer's use and registration of Opposer's Registered Mark so that Applicant's mark is not a source of consumer confusion nor is it likely to cause consumer confusion.

6. Opposer's claims are barred by the doctrine of waiver.

7. Opposer's claims are barred, in whole or in part, by the doctrine of a lack of enforcement of Opposer's rights in Opposer's Registered Mark and by reason of other parties' use and/or registration of marks containing CARE EVERYWHERE in conjunction with computer software and software-related services in the healthcare field.

8. Applicant reserves the right to assert additional defenses based on information learned or obtained during discovery.

DATED: October 14, 2016 Respectfully submitted,

/Cathryn A. Berryman/

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ELECTRONIC FILING CERTIFICATE

I hereby certify that this paper and any attachments are being submitted electronically through the Electronic System for Trademark Trials and Appeals ("ESTTA") on October 14, 2016.

Signed: /Cathryn A. Berryman/

Date: October 14, 2016

CERTIFICATE OF SERVICE

I certify that a true copy of this paper and any attachment(s) was mailed to Opposer via email and First Class Mail to Opposer's attorney of record on October 14, 2016, at the following address:

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