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

Proceeding	91166022
Party	Defendant VARIAN MEDICAL SYSTEMS TECHNOLOGIES, INC. VARIAN MEDICAL SYSTEMS TECHNOLOGIES, INC . 3100 HANSEN WAY PALO ALTO, CA 94304
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Date	11/30/2005
Attachments	Answer.pdf (5 pages)

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

ZIMMER TECHNOLOGY, INC.,

Opposer,

vs.

VARIAN MEDICAL SYSTEMS
TECHNOLOGIES, INC.,

Applicant.

Opposition No. 91166022

Serial No. 78/316,019

Original Filing Date: 10/20/03

Mark: TRILOGY

Publication Date: 12/29/04

ANSWER TO NOTICE OF OPPOSITION

Applicant Varian Medical Systems Technologies, Inc. ("Applicant") answers the Notice of Opposition of opposer Zimmer Technology, Inc. ("Opposer") as follows:

In response to the introductory unnumbered paragraph, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding Opposer's form, its status or principal office or the basis or grounds for the Notice of Opposition and, therefore, denies the allegations. Applicant denies that Opposer will be damaged by registration of Applicant's application Serial No. 78/316,019 ("the '019 Application").

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph (1) of the Notice of Opposition, and on that basis, denies such allegations.
2. In answer to paragraph (2) of the Notice of Opposition, Applicant admits that Opposer is

the owner of the trademark, Registration No. 1,846,174 ("the '174 Registration"). Applicant lacks sufficient knowledge or information to form a belief as to the truth of the rest of the allegations of paragraph (2) , and on that basis, denies the remaining allegations of paragraph (2).

3. [There was no paragraph or allegation designated with the Numeral 3 in the Notice of Opposition.]

4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph (4) of the Notice of Opposition, and on that basis, denies such allegations.

5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph (5) of the Notice of Opposition, and on that basis, denies such allegations.

6. In answer to paragraph (6) of the Notice of Opposition, Applicant admits that Applicant filed an application, Serial number 78/316,019, for registration of the trademark "TRILOGY" for "medical device for radiotherapy and radiosurgery comprising hardware and computer software sold together as a unit for use in patient immobilization, treatment planning, image guided targeting, treatment delivery, verification and quality assurance."

7. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph (7) of the Notice of Opposition, and on that basis, denies such allegations.

8. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph (8) of the Notice of Opposition, and on that basis, denies such allegations.

9. In answer to paragraph (9) of the Notice of Opposition Applicant admits that Opposer filed the application and obtained the registration for the '174 Registration prior to the filing date of Applicant's '019 Application. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the rest of the allegations of paragraph (9), and on that basis, denies the remaining allegations of paragraph (9).

10. In answer to paragraph (10) of the Notice of Opposition, Applicant denies each and every allegation of said paragraph.

11. In answer to paragraph (11) of the Opposition, Applicant denies each and every allegation of said paragraph.

AFFIRMATIVE DEFENSES

As separate affirmative defenses to the Opposition, Applicant alleges as follows:

FIRST AFFIRMATIVE DEFENSE LACK OF LIKELIHOOD OF CONFUSION

12. Applicant's '019 Application is not likely to cause confusion among consumers that its "medical device for radiotherapy and radiosurgery comprising hardware and computer software sold together as a unit for use in patient immobilization, treatment planning, image guided targeting, treatment delivery, verification and quality assurance" are offered by, are sponsored by, or otherwise endorsed by Opposer. Opposer's '174 Registration and Applicant's '019 Application, are displayed differently on products or in connection with services which themselves are different, perform different functions, and are packaged, sold, delivered and used differently in different markets and to different consumers. There is no basis on which a reasonable consumer

could be confused as to the origin or sponsorship of the parties' goods or services. Applicant's mark also does not create a likelihood that consumers falsely will believe that Applicant and Opposer are affiliated in any way.

SECOND AFFIRMATIVE DEFENSE
NO LIKELIHOOD OF CONFUSION WHERE GOODS ARE SPECIFICALLY DEFINED

13. Even if the Board were to agree with Opposer that a likelihood of confusion exists with respect to Applicant's good and services as broadly defined in the medical field, there is no likelihood of confusion with respect to Applicant's actual goods and services, which consists of radio therapy and radiosurgery medical devices.

THIRD AFFIRMATIVE DEFENSE
NO INJURY OR DAMAGE

14. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from registration of Applicant's '019 Application.

WHEREFORE, Applicant requests judgment as follows:

1. That the Opposition be denied,
2. That Applicant's entire Application, Serial Number 78/316,019, be allowed to proceed to registration; and
3. That Applicant be granted further reasonable and appropriate relief.

DATED: November 30, 2005

Respectfully submitted,

TOMLINSON ZISKO LLP

By: _____



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of November, 2005 a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was placed in the U.S. mail, first class, postage prepaid, and addressed as follows:

Gerard T. Gallagher
BAKER & DANIELS LLP
205 West Jefferson Blvd, Suite 250
South Bend, IN 46601



Kelly Phair McCarthy