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

Proceeding	91239705
Party	Defendant ModernaTX, Inc.
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Date	05/08/2018
Attachments	Digital Vaccines Answer to Amended NOO.pdf(91912 bytes)

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

In the matter of Application Serial No. 87258838
For the mark DIGITAL VACCINES

BHARGAV SRI PRAKASH and FRIENDSLEARN, INC., Opposers, *v.* MODERNATX, INC., Applicant.	Cancellation No. 91239705 Atty. Ref. No. 42547-0044PP1

ANSWER TO FIRST AMENDED NOTICE OF OPPOSITION

Applicant ModernaTX, Inc. ("Applicant" or "ModernaTX"), by its undersigned counsel, hereby answers the First Amended Notice of Opposition filed by Bhargav Sri Prakash and ThinkLearn, Inc. (together, "Opposers") as follows:

Applicant first states that the final sentence of the introductory paragraph of the First Amended Notice of Opposition still contains extraneous material not pertinent to this matter. The application at issue does not include the services set forth in last sentence of the introduction (after the words "in Class 42")..

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the First Amended Notice of Opposition, and therefore denies the same.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the First Amended Notice of Opposition, and therefore denies the same.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the First Amended Notice of Opposition, and therefore denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the First Amended Notice of Opposition, and therefore denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the First Amended Notice of Opposition, and therefore denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the First Amended Notice of Opposition, and therefore denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the First Amended Notice of Opposition, and therefore denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the First Amended Notice of Opposition, and therefore denies the same.

9. Paragraph 9 of the First Amended Notice of Opposition refers to a document which speaks for itself. Subject to the foregoing, Applicant admits that the subject application ("the '838 Application") was filed on December 6, 2016.

10. Paragraph 10 of the First Amended Notice of Opposition refers to a document – the '838 Application – which speaks for itself. To the extent that Paragraph 10 mischaracterizes the contents of the '838 Application, the paragraph is denied.

11. Paragraph 11 of the First Amended Notice of Opposition refers to a document which speaks for itself. To the extent that Paragraph 10 mischaracterizes the contents of the file history of the '838 Application, the paragraph is denied.

12. Applicant admits the allegation in Paragraph 12 of the First Amended Notice of Opposition.

13. Applicant admits the allegations in Paragraph 13 of the First Amended Notice of Opposition.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the First Amended Notice of Opposition, and therefore denies the same.

15. The allegations set forth in Paragraph 15 of the First Amended Notice of Opposition are not relevant to the issues in this proceeding and therefore require no response. To the extent that Paragraph 15 requires a response, Applicant states that the file history of the referenced application speaks for itself.

16. The allegations set forth in Paragraph 16 of the First Amended Notice of Opposition are not relevant to the issues in this proceeding and therefore require no response. To the extent that Paragraph 16 requires a response, Applicant states that the file history of the referenced application speaks for itself.

17. Paragraph 17 of the First Amended Notice of Opposition states a legal conclusion to which no response is required. To the extent that Paragraph 17 of the Notice of Opposition sets forth factual allegations, those are denied.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 of the First Amended Notice of Opposition, and therefore denies the same.

19. Applicant is unable to admit or deny the allegations in Paragraph 19 of the First Amended Notice of Opposition, to the extent that it is unclear what is meant by "digital technology".

20. Paragraph 20 of the First Amended Notice of Opposition states a legal conclusion to which no response is required. To the extent that Paragraph 20 sets forth factual allegations, those are denied.

21. Paragraph 21 of the First Amended Notice of Opposition states a legal conclusion to which no response is required. To the extent that Paragraph 21 sets forth factual allegations, those are denied.

22. The allegations set forth in Paragraph 22 of the First Amended Notice of Opposition are not relevant to the issues in this proceeding and therefore require no response. To the extent that Paragraph 22 requires a response, Applicant admits that it has not yet used the subject mark in Commerce.

23. Paragraph 23 of the First Amended Notice of Opposition states a legal conclusion to which no response is required.

24. Paragraph 24 of the First Amended Notice of Opposition states a legal conclusion to which no response is required. To the extent that Paragraph 24 sets forth factual allegations, those are denied.

25. Paragraph 25 of the First Amended Notice of Opposition states a legal conclusion to which no response is required. To the extent that Paragraph 25 sets forth factual allegations, those are denied.

26. Paragraph 26 of the First Amended Notice of Opposition states a legal conclusion to which no response is required. To the extent that Paragraph 26 sets forth factual allegations, those are denied.

OTHER DEFENSES

1. The Opposition should be dismissed because Opposers lack standing.

2. Applicant hereby gives notice that it intends to rely on such other and further defenses as may become available or apparent during discovery proceedings in this case and hereby reserves the right to amend its Answer and to assert any such defenses.

Respectfully submitted,

MODERNATX, INC.

By its Attorneys,

Dated: May 8, 2018

/Robert M. O'Connell, Jr./

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CERTIFICATE OF SERVICE

It is further certified that on May 8, 2018 the foregoing **ANSWER TO NOTICE OF OPPOSITION** is being served by e-mail to the following:

Jef Pearlman
jipic@law.stanford.edu
jef@law.stanford.edu

/Robert M. O'Connell, Jr./
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