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Filing date: **01/31/2020**

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

Proceeding	91249091
Party	Defendant Board of Supervisors of Louisiana State University and Agricultural and Mechanical College
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Submission	Answer
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Date	01/31/2020
Attachments	2020-01-31 Answer to Amended Opposition.pdf(788844 bytes)

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

INTUITIVE SURGICAL)
OPERATIONS, INC)
)
 Opposer,)
)
v.)
)
BOARD OF SUPERVISORS OF)
LOUISIANA STATE UNIVERSITY)
and AGRICULTURAL and)
MECHANICAL COLLEGE)
)
 Applicant,)
_____))

Opposition No.: 91249091
Serial No.: 88/113,962
Filed: September 12, 2018
Published: February 26, 2019
Mark: DaVinci Degree

TO: Commissioner For Trademarks
ATTN: Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF AMENDED
OPPOSITION**

Applicant, BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE (“LSU”), through their authorized representative of record, Andrew Maas, hereby answer the NOTICE OF AMENDED OPPOSITION filed on November 6, 2019 by INTUITIVE SURGICAL OPERATIONS, INC. as follows:

The first unnumbered paragraph of the notice of amended opposition contains an introduction to which no response is given.

- 1. LSU lacks knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 1, and on that basis, denies them.
- 2. Paragraph 2 makes multiple assertions and does not limit itself to a single fact of consequence. LSU admits that Opposer is shown as owner of record for the registrations

listed in Paragraph 2, however LSU lacks sufficient information for the addition allegations and denies the same.

3. LSU lacks knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 3, and on that basis, denies them.
4. LSU lacks knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 4, and on that basis, denies them.
5. Paragraph 5 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 5 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 5 asserts additional allegations, LSU denies the same.
6. Paragraph 6 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 6 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 6 asserts additional allegations, LSU denies the same.
7. Paragraph 7 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 7 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 7 asserts additional allegations, LSU denies the same.
8. Paragraph 8 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 8 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 8 asserts additional allegations, LSU denies the same.
9. Paragraph 9 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 9 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 9 asserts additional allegations, LSU denies the same.

10. Paragraph 10 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 10 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 10 asserts additional allegations, LSU denies the same.
11. Paragraph 11 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 11 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 11 asserts additional allegations, LSU denies the same.
12. Paragraph 12 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 12 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 12 asserts additional allegations, LSU denies the same.
13. Paragraph 13 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 13 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 13 asserts additional allegations, LSU denies the same.
14. Paragraph 14 makes multiple assertions and does not limit itself to a single fact of consequence. Whether the registrations identified in Paragraph 14 are valid and subsisting calls for legal conclusion, to which no response is required. To the extent Paragraph 14 asserts additional allegations, LSU denies the same.
15. LSU lacks knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 15, and on that basis, denies them.
16. LSU lacks knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 16, and on that basis, denies them.
17. LSU denies the allegations contained in Paragraph 17.
18. LSU admits the allegations contained in Paragraph 18.

19. LSU admits the allegations contained in Paragraph 19.
20. LSU denies the allegations contained in Paragraph 20. *See* Exhibit A.
21. LSU incorporates its answers contained in Paragraphs 1-21 herein.
22. LSU denies the allegations contained in Paragraph 22. DA VINCI and DAVINCI are commonly used terms in connection with educational service, providing course of instruction at the college level and distribution of course material in connection therewith and, as such, Opposer's alleged marks are not entitled to a broad scope of protection. For example, the following federal registrations exist:

Mark: DA VINCI SCHOOLS

Serial #: 86759041

Registration #: 5001827

Registration date: 19-Jul-16

Goods and Services: Education services in the nature of charter schools.

Mark: THE DA VINCI INITIATIVE

Serial #: 86236439

Registration #: 4673069

Registration date: 13-Jan-15

Goods and Services: Educational services, namely, courses, seminars and workshops for training teachers and educators in the field of art, and the distribution of training materials in connection therewith; Educational services, namely, developing curriculum for teachers and educators.

Mark: DA VINCI - THE GENIUS

Serial #: 85864879

Registration #: 4586851

Registration date: 19-Aug-14

Goods and Services: Educational services, namely, providing interactive audio-visual exhibitions in the field of art and science; providing of training in the field of running interactive audio-visual exhibitions in the field of art and science; entertainment, namely, entertainment in the nature of interactive audio-visual exhibitions in the field of art and science; arranging of exhibitions for cultural, educational and entertainment purposes; conducting of exhibitions for cultural, educational and entertainment purposes; display of works of art, namely, display of art in interactive audio-visual exhibitions; museum exhibitions; organization of exhibitions for cultural, entertainment or educational purposes.

Mark: DA VINCI DECATHLON

Serial #: 85139984

Registration #: 4133910

Registration date: 1-May-12

Goods and Services: Organization of academic inter-school competitions

Mark: THE DA VINCI SCHOOL

Serial #: 85245219

Registration #: 5276545

Registration date: 29-Aug-17

Goods and Services: Educational services, namely, providing courses of instruction for 18 months to kindergarten level.

Mark: UNLEASH YOUR INNER DA VINCI

Serial #: 87141863

Registration #: 5283954

Registration date: 12-Sep-17

Goods and Services: Educational and entertainment services, namely, providing motivational public speaking services in the field of motivation to uncover hidden problem-solving abilities to achieve business and personal success.

Mark: LEONARDO DA VINCI AWARD

Serial #: 86151705

Registration #: 4583955

Registration date: 12-Aug-14

Goods and Services: Educational services providing incentives to artists who demonstrate excellence through the issuance of awards which recognize superior artists in the field of theatre, film, television, music, fine art and performance art such as actors, authors, comics, models and curators but excluding any recognition of artists for achievement as engineers and/or architects.

Mark: DA VINCI POSITIVE IMPACT

Serial #: 85617107

Registration #: 4393444

Registration date: 27-Aug-13

Goods and Services: Community outreach services for promoting art appreciation and painting, namely, hosting educational workshops and educational events for youth in the community in the fields of art appreciation and painting.

Mark: DA VINCI BODY MIND CODE

Serial #: 86592549

Registration #: 4855267

Registration date: 17-Nov-15

Goods and Services: Educational services, namely, conducting lectures, workshops and exhibitions in the field of personal and spiritual development, health and wellness and publishing and distributing educational materials in connection therewith.

Mark: TIPSY DA VINCI

Serial #: 86597839

Registration #: 4858852

Registration date: 24-Nov-15

Goods and Services: Education services, namely, providing classes in the field of paint and sip art.

Mark: DA VINCI LEARNING

Serial #: 79057450

Registration #: 3699077

Registration date: 20-Oct-09

Goods and Services: Magnetic tape recorders; devices for the recording, transmission and replay of sounds and images; sound and image carriers, namely, vinyl records, compact discs, audio tapes, compact audio cassettes, video discs, video foils, cassettes, audio tapes, CD-ROMs, DVDs and laser discs, all featuring natural science, educational programming and entertainment; devices for the recording, transmission and replay of sounds and images; sound and image carriers, namely, vinyl records, compact discs, audio tapes, compact audio cassettes, video discs, video foils, cassettes, audio tapes, CD-ROMs, DVDs and laser discs, all being blank; video game programs

Mark: DA VINCI TOUR

Serial #: 79070313

Registration #: 3906871

Registration date: 18-Jan-11

Goods and Services: Organizing exhibitions for cultural, educational or entertainment purposes; and provision of information relating to the organizing of cultural, educational or entertainment exhibitions; providing amusement arcade services; holiday camps services and sports camps; arranging and conducting educational conferences, forums, congresses, colloquiums, seminars, symposiums in the field of ancient monuments, organizing exhibitions for cultural, educational or entertainment purposes; entertainment information; provision of information relating to educational services; operating lotteries; entertainment in

the nature of live performances by a musical group; music production; multimedia publishing of books, magazines, journals, software, games, music, and electronic publications; written text editing; publishing of books and magazines; editing of radio and television programs; rental of musical and/or audiovisual works in the nature of motion pictures, films, movies, prerecorded digital versatile discs in a variety of genres; game lending libraries; recording studio services; videotape editing, videotape film production, musical production services, movie studios, discotheque services, music halls, orchestra services, organization of special events in the nature of balls; arranging concerts, production of television shows; rental of scenery sets for television shows; production of films; entertainment services, namely, an on-going series featuring tourism and ancient monuments, provided through cable television and radio broadcasts; editing of radio and television programs; amusement parks; booking of seats for shows; museum services; operating zoological gardens; organization of fashion shows

Mark: SCUOLA LEONARDO DA VINCI

Serial #: 79017459

Registration #: 3230028

Registration date: 17-Apr-07

Goods and Services: Education, instruction and recreation services for individuals in the form of lessons and courses in Italian language and culture, in particular for foreigners

Mark: DA VINCI

Serial #: 79125303

Registration #: 4535193

Registration date: 27-May-14

Goods and Services: Printed matter, namely, magazines, books, printed periodicals, newsletters, and brochures, all in the fields of natural science, education and entertainment;

photographs; paper, cardboard; products made from paper and cardboard, namely, cardboard containers

Mark: DA VINCI SCIENCE CENTER

Serial #: 76707322

Registration #: 4115118

Registration date: 20-Mar-12

Goods and Services: Museum services providing science displays and offering guided tours of the various displays; educational services, namely, providing courses of instruction at the primary and secondary level and providing educational programs for youth, teachers, families, and the general public in the field of science.

Mark: da Vinci's Room

Serial #: 87952762

Registration #: 5660721

Registration date: 22-Jan-19

Goods and Services: Card Games; Board Games; Electronic Learning Toys; Children's educational toys for developing fine motor, cognitive, and counting skills.

Mark: VIA VINCI

Serial #: 79046574

Registration #: 3570185

Registration date: 3-Feb-09

Goods and Services: Educational services, namely, providing courses of instruction at the college and graduate school level for bachelors, masters, and doctorate degrees and distributing course material in connection therewith; education services, namely, providing courses, training courses, seminars, and workshops in the field of leadership and entrepreneurship; developing and providing in-company education programs and professional educational programs and workshops, all in the fields of the humanities, sciences, business,

leadership, governance, management, health care, engineering, environmental sciences, environmental conservation, energy, mathematics, and liberal arts; organization of educational congresses, conferences, symposia, seminars, and lectures, all in the fields of the humanities, sciences, business, leadership, governance, management, health care, engineering, environmental sciences, environmental conservation, energy, mathematics, and liberal arts; publication by electronic means or by other means of books, magazines, newsletters and other printed matter for educational purposes; providing information on and about education; organizing community sporting and cultural events

Mark: DA VINCI AWARDS

Serial #: 78598391

Registration #: 3071008

Registration date: 21-Mar-06

Goods and Services: Providing recognition of the creative and innovative achievements of engineers, architects and other professionals on behalf of individuals with disabilities by way of issuing awards.

Mark: SPIRIT OF DA VINCI

Serial #: 78616347

Registration #: 3326114

Registration date: 30-Oct-07

Goods and Services: Educational services, namely, providing seminars in the fields of science and the arts, and providing recognition and incentives to inventors to demonstrate excellence in the field of creativity and invention through the issuance of awards in connection therewith; entertainment services, namely, retreats and presentations in the fields of science and the arts.

Mark: DA VINCI DISCOVERY CENTER OF SCIENCE AND TECHNOLOGY

Serial #: 78457784

Registration #: 3015317

Registration date: 15-Nov-05

Goods and Services: educational services, namely providing courses of instruction at the primary and secondary level and providing educational programs for youth, teachers, families, and the general public in the field of science.

Mark: THE DA VINCI EFFECT

Serial #: 76575004

Registration #: 3066403

Registration date: 7-Mar-06

Goods and Services: Educational services, namely providing instructional, motivational, outreach and mentoring programs to high school, undergraduate, graduate, post-graduate, and professional students in the fields of liberal arts, engineering, science, computer science, fine arts, humanities and social sciences, industrial administration, and public policy and management.

In addition, Opposer's mark is not even offered a broad scope of protection in its own relevant field of medical and surgical equipment. For example, the following federal registrations exist:

Mark: DA VINCI

Registration #: 4,265,114

Goods and Services: In connection with a "medical apparatus in the form of closed circuit television cameras, camera mounts, and monitors for providing visual assistance to persons with symptoms associated with low vision;"

Mark: DA VINCI FACELIFT

Registration #: 4,486,656

Goods and Services: In connection with "cosmetic and plastic surgery."

Mark: DA VINCI

Registration #: 3,751,705

Goods and Services: In connection with “dental implants, crowns and bridges,” among other things;

Mark: DAVINCI TOOL

Registration No. 5,244,206

Goods and Services: In connection with “massage apparatus; massage apparatus for neck; medical apparatus used for occipital neck and muscle massage; massage apparatus used for point concentrated therapy; therapeutic apparatus for massaging of the neck.”

Mark: DA VINCI DENTAL STUDIOS

Registration # 2,061,195

Goods and Services: In connection with “dental laboratory services”.

Further, Opposer’s alleged marks do not share the same dominant term as LSU’s mitigating any similarities of commercial impression. The dominant term in LSU’s mark is “Degree.” The following list of offered goods and services showcases that the use of Da Vinci in LSU’s mark is a non-dominant descriptive term, while the Opposer’s mark is an arbitrary dominant term.

Opposer

Da Vinci; S, SI, SP, X, XI, Sonicpro,...

LSU

Degree; Art, Physics, Mathematics, Da Vinci, Political Science,...

23. LSU denies the allegations contained in Paragraph 23.
24. LSU denies the allegations contained in Paragraph 24.
25. LSU incorporates its answers contained in Paragraphs 1-25 herein.
26. LSU denies the allegations contained in Paragraph 26.
27. LSU denies the allegations contained in Paragraph 27.

28. LSU incorporates its answers contained in Paragraphs 1-28.
29. LSU denies the allegations contained in Paragraph 29.
30. LSU denies the allegations contained in Paragraphs 30.
31. LSU lacks knowledge and information sufficient to form a belief as to the allegations contained in Paragraph 31, and on that basis, denies them.
32. LSU denies the allegations contained in Paragraph 32.
33. LSU denies the allegations contained in Paragraph 33.
34. Paragraph 34 makes multiple assertions and does not limit itself to a single fact of consequence. Admitted with respect to Opposer having no connection in any way with Applicant or the proposed use by Applicant of the Da Vinci Degree mark. LSU denies the allegation that Opposer's reputation is of such nature that a connection with Opposer will be presumed, rather than a connection with Leonardo Da Vinci presumed, when Applicant's Da Vinci Degree mark is used on or with or to promote Applicant's educational services as identified in Application.
35. LSU denies the allegations contained in Paragraph 35.
36. LSU denies the allegations contained in Paragraph 36.

AFFIRMATIVE DEFENSES

LSU undertakes the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated below. LSU expressly reserves the right to plead additional affirmative defenses and other defenses should any such defenses be revealed by discovery in this case. As for its affirmative and other defenses, LSU states as follow:

First Affirmative Defense

Opposer fails to state a claim upon which relief can be granted.

Second Affirmative Defense

There is no likelihood of confusion, mistake, or deception between opposer's marks and LSU's DaVinci Degree mark.

Third Affirmative Defense

Any and all acts alleged to have been committed by LSU were performed with lack of knowledge and lack of willful intent.

PRAYER FOR RELIEF

WHEREFORE, LSU respectfully requests this Court to enter judgment in its favor and against Intuitive Surgical, Inc. by granting the following relief:

1. Declaration that the DaVinci Degree mark does not create a likelihood of confusion.
2. Declaration that the DaVinci Degree mark does not create dilution.
3. Declaration that the DaVinci Degree mark does not create a false suggestion of a connection.
4. Declaration that the DaVinci Degree mark does not present a misrepresentation of source.
5. Attorney's Fees.
6. Any other relief the court deems appropriate.

Dated: January 31, 2020

Respectfully submitted,
By /s/ Andrew Maas

Andrew Maas

Authorized Representative of Record for Applicant
BOARD OF SUPERVISORS OF
LOUISIANA STATE UNIVERSITY AND
AGRICULTURAL AND MECHANICAL COLLEGE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER’S NOTICE OF AMENDED OPPOSITION has been served on INUITIVE SURGICAL, INC. by forwarding said copy on January 31, 2020, via email to: Michelle Kahn at the email addresses mkahn@sheppardmullin.com, pmarquez@sheppardmullin.com, sftmdocket@sheppardmullin.com, and a complete copy is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michelle D. Kahn
Sheppard Mullin
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

Signature: /s/Andrew Maas
Andrew Maas

The screenshot shows the top portion of the LSU Online Degrees website. At the top is a purple navigation bar with the following links: Online Programs (with a dropdown arrow), Student Support, Continuing Education, Admissions, About LSU Online (with a dropdown arrow), Newsroom, and Contact Us. Below the navigation bar is a large hero image showing two students, a man with glasses and a woman, looking at a laptop. Overlaid on the bottom left of the image is the text "Online Programs" in a small font and "DaVinci Degrees" in a large, bold, white font. On the right side of the hero image is a white sign-up form with the heading "Discover LSU's World-Class Online Degrees" in orange. The form includes input fields for First Name, Last Name, Email, Phone, and Zip Code, a dropdown menu with "--select an item--", a checkbox for "I agree to the Privacy Agreement", and a yellow "SEND" button.

A New Type of Innovative Degree, Built for the Future

The DaVinci Degree is a new type of degree program that fuses together technical or business- related knowledge and skill sets with outcomes gained from the humanities, social sciences, fine and performing arts. This "STEAM" emphasis (Science, Technology, Engineering, Arts& Math) graduates students with highly employable skills, prepared to engage in their communities and participate in our democracy.

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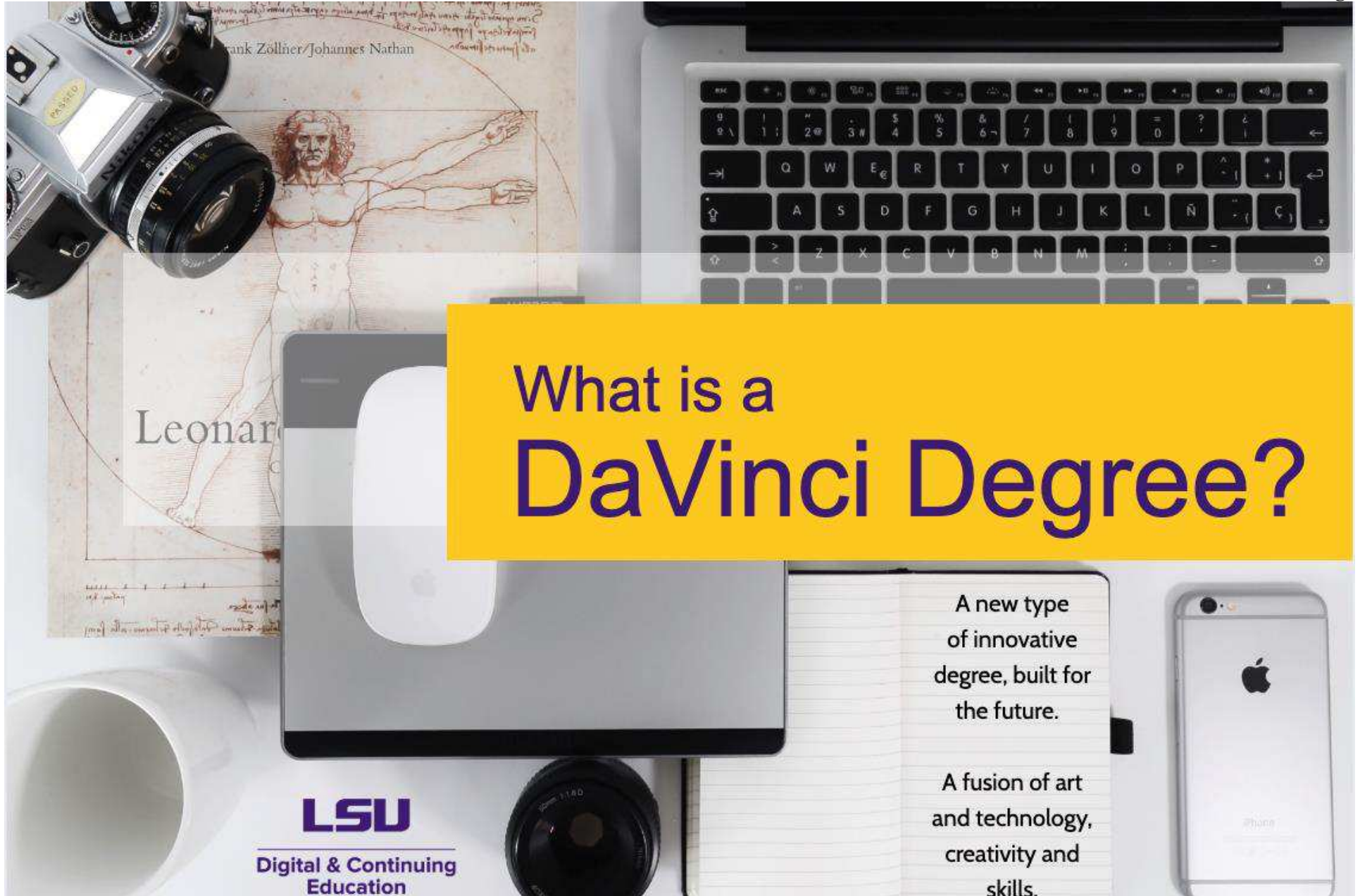
These degrees are designed to work for post-traditional and non-traditional learners, delivered both 100% online and in innovative blended formats. DaVinci degrees support the merging of art, science, and technology to support the passions of students while preparing them for meaningful jobs with family-sustaining wages.

New Programs are Coming Soon

We are launching new programs and courses soon. Please check back for updates.

See What Makes LSU Online Special





What is a DaVinci Degree?

A new type
of innovative
degree, built for
the future.

A fusion of art
and technology,
creativity and
skills.

LSU
Digital & Continuing
Education

Technical skills and creative skills are not mutually exclusive: our students need both.

The DaVinci Degree is a new type of degree program that fuses together technical or business-related knowledge and skill sets with outcomes gained from the humanities, social sciences, fine and performing arts. This "STEAM" emphasis (Science, Technology, Engineering, Arts & Math) graduates students with highly employable skills, prepared to engage in their communities and participate in our democracy.

These degrees are designed to work for post-traditional and non-traditional learners, delivered both 100% online and in innovative blended formats. DaVinci degrees support the merging of art, science, and technology to support the passions of students while preparing them for meaningful jobs with family-sustaining wages.



* <https://www.edsurge.com/news/2016-05-26-think-students-are-unhappy-with-higher-education-try-employers>

The DaVinci Degree

✓ Employers Question the Degree

Though there is still compelling evidence that a college degree has monetary value to students, degrees are seen as less relevant to whether a prospective worker is a good bet for the company. Google, Apple and others have removed degree requirements though many businesses still value the degree as a way to validate "soft skills".*

✓ Liberal Arts are Still Needed

Despite the need for, and emphasis on, technical skill sets, data suggests that the Liberal Arts and other related majors are still being hired by employers. We believe a degree still has value and are reimagining what the "degree" can be by combining technical skill sets with knowledge and skills from the humanities, social sciences, and the arts.

✓ What Are These Degrees?

Some potential degree paths include:

- BA in Analytics and Sociology
- BA in Analytics and Political Science
- BA in Business and Psychology
- BA in Web Development and English
- MA in Analytics and Human-Centered Design
- MEd. in Analytics and Higher Education
- MA in Web Development and Creative Writing