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

Proceeding	91252238
Party	Defendant AMC Technology LLC
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Attachments	Intuitive Surgical Operations Inc v AMC Technology Opposition No 91252238 ANSWER.pdf(128311 bytes)

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

In the Matter of Trademark Application Serial No. 88/358,451

Intuitive Surgical Operations, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91252238
)	
AMC Technology LLC,)	
)	
Applicant.)	
)	

**ANSWER TO NOTICE OF OPPOSITION
AND AFFIRMATIVE DEFENSES**

Applicant, AMC Technology LLC (“Applicant”), through its undersigned counsel, hereby timely files its Answer to Notice of Opposition and Affirmative Defenses in response to the Notice of Opposition filed by Intuitive Surgical Operations, Inc. (“Opposer”). Applicant answers the specific allegations in Opposer’s Notice of Opposition (“Opposition”) as follows:

1. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 1 of the Opposition and therefore denies those allegations.
2. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 2 of the Opposition and therefore denies those allegations.
3. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 3 of the Opposition and therefore denies those allegations.
4. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 4 of the Opposition and therefore denies those allegations.
5. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 5 of the Opposition and therefore denies those allegations.

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

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

8. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 8 of the Opposition and therefore denies those allegations.

9. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 9 of the Opposition and therefore denies those allegations.

10. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 10 of the Opposition and therefore denies those allegations.

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

12. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 12 of the Opposition and therefore denies those allegations.

13. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 13 of the Opposition and therefore denies those allegations.

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

15. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 15 of the Opposition and therefore denies those allegations.

16. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 16 of the Opposition and therefore denies those allegations.

17. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 17 of the Opposition and therefore denies those allegations.

FACTUAL BACKGROUND REGARDING THE APPLICATION

18. Applicant admits it is a Virginia limited liability company with a principal place of business at 1707 Summit Avenue, Suite 201, Richmond, Virginia 23230. Applicant admits it filed Application Serial No. 88/358,451 in Class 42 with the United States Patent and Trademark Office seeking to register Applicant's DAVINCI and Design trademark for the following services: "Design, development, installation and maintenance of computer software" in International Class 42 on the basis of actual use pursuant to Section 1(a) of the Lanham Act ("Application"). Applicant admits it is the current owner of record for the Application.

19. Applicant admits the allegation in paragraph 19 of the Opposition.

20. Applicant admits the allegations in paragraph 20 of the Opposition.

**FIRST GROUND FOR OPPOSITION
(Likelihood of Confusion)**

21. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 21 of the Opposition and therefore denies those allegations.

22. Applicant denies the allegations in paragraph 22.

23. Applicant denies the allegations in paragraph 23.

24. Applicant denies the allegations in paragraph 24.

**SECOND GROUND FOR OPPOSITION
(Dilution)**

25. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 25 of the Opposition and therefore denies those allegations.

26. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 26 of the Opposition and therefore denies those allegations.

27. Applicant denies the allegations in paragraph 27.

**THIRD GROUND FOR OPPOSITION
(False Suggestion of a Connection)**

28. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 28 of the Opposition and therefore denies those allegations.

29. Applicant denies the allegations in paragraph 29.

30. Applicant denies the allegations in paragraph 30.

31. Applicant is without sufficient information to form a belief as to the truth of the allegations in paragraph 31 of the Opposition and therefore denies those allegations.

32. Applicant admits Opposer is not connected in any way with Applicant or Applicant's use of its DAVINCI trademark for the services identified in the Application. Applicant denies the remaining allegations in paragraph 32.

33. Applicant denies the allegations in paragraph 33.

34. Applicant denies the allegations in paragraph 34.

DAMAGE TO OPPOSER

35. Applicant denies the allegations in paragraph 35.

36. Applicant denies the allegations in paragraph 36.

AFFIRMATIVE DEFENSES

Applicant sets forth below its affirmative defenses. By setting forth these affirmative defenses, Applicant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Opposer. Moreover, nothing stated herein is

intended or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Opposer's allegations.

**FIRST AFFIRMATIVE DEFENSE
(Laches)**

Opposer's action is barred by the doctrine of laches. Applicant has used its DAVINCI trademark in interstate commerce since 2018. Applicant's and Opposer's marks have co-existed peacefully such that it is evident Opposer has not engaged in reasonable due diligence to protect its allegedly famous and well-known marks, thereby causing Applicant prejudice due to Opposer's delay.

**SECOND AFFIRMATIVE DEFENSE
(Waiver or Estoppel)**

Opposer's action is barred by the doctrine of waiver or estoppel as Applicant has experienced undue prejudice because of its significant investment in promoting and building its mark, such that Applicant's substantial investment will be lost if the Application is not permitted to proceed.

**THIRD AFFIRMATIVE DEFENSE
(Additional Affirmative Defense)**

Applicant hereby gives notice that it intends to rely on additional affirmative defenses that become available or apparent during discovery and thus reserves the right to amend its answer to assert such additional affirmative defenses.

THEREFORE, having fully answered, Applicant respectfully requests that judgement be entered in its favor and that Application Serial No. 88/358,451 be permitted to proceed to registration.

This is the 19th day of May 2020.

Respectfully submitted,

/Edward T. White/

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AMC Technology LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Answer to Notice of Opposition and Affirmative Defenses was served in the following manner:

VIA EMAIL

MICHELLE D. KAHN
SHEPPARD MULLIN
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CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that the foregoing Answer to Notice of Opposition and Affirmative Defenses is being electronically submitted through the Electronic System for the Trademark Trial and Appeal Board (“ESTTA”) on this May 19, 2020.

/Yvonne D. Flaherty
Trademark Paralegal