

ESTTA Tracking number: **ESTTA1184951**

Filing date: **01/17/2022**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer information

Name	Brainium Studios LLC
Granted to date of previous extension	01/16/2022
Address	1022 NW MARSHALL STREET SUITE 480 PORTLAND, OR 97209 UNITED STATES
Correspondence information	B. ANNA MCCOY MCCOY RUSSELL LLP 1410 NW JOHNSON STREET SUITE 201 PORTLAND, OR 97209 UNITED STATES Primary email: TMmail@mccrus.com Secondary email(s): mccoym@mccrus.com, penfield@mccrus.com, masters@mccrus.com, schmid@mccrus.com 9712718020

Applicant information

Application no.	90350810	Publication date	07/20/2021
Opposition filing date	01/17/2022	Opposition period ends	01/16/2022
Applicant	Amazon Technologies, Inc. 410 TERRY AVENUE NORTH SEATTLE, WA 98109 UNITED STATES		

Goods/services affected by opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer hardware for training machine learning models across applications; Computer hardware for training and accelerating machine learning models for image recognition, natural language processing, speech recognition, translation, personalization, fraud detection, forecasting, autonomous vehicles, and recommendation engines; Computer hardware for machine learning acceleration across applications; Computer hardware specifically designed to facilitate the delivery of cloud computing services, namely, semiconductors, computer chips, integrated circuits, central processing units, electronic circuits and microprocessors; computer chips; computer central processing units; circuit boards; electronic circuit cards; integrated circuit modules; downloadable computer software for use in the operation of semiconductors, computer chips, and central processing units; downloadable computer software development tools; downloadable computer software for developing computer hardware; downloadable computer firmware and</p>
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software for use in the operation of semiconductors, computerchips, and central processing units; downloadable computer software used for advanced cloud computing functions in the nature of machine learning, optimizing power, performance and cost for cloud computing services, and delivering cloud computing services at scale; computer hardware used for advanced cloud computing functions in the nature of machine learning, optimizing power, performance and cost for cloud computing services, and delivering cloud computing services at scale; downloadable computer software for operation, management and control of computer chips, central processing units and microprocessors


Class 040. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Custom manufacture of computer hardware, in particular semiconductors, computerchips, integrated circuits, and centralprocessing units; manufacturing electric and electronic components for others

Class 042. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Providing temporary use of on-line non-downloadable cloud computing software for use with operating and running computer hardware for accelerating machine learning; Providing temporary use of on-linenon-downloadable cloud computing software for training machine learning models across applications; Providing temporaryuse of on-line non-downloadable cloud computing software for use with operatingand running computer hardware for training and accelerating machine learning models for image recognition, natural language processing, speech recognition, translation, personalization, fraud detection, forecasting, autonomous vehicles, and recommendation engines; Computer hardware engineering services; design of semi-conductors, integrated circuits, computer chips and central processing units forothers; Providing temporary use of online non-downloadable cloud computing software for use with operating and running computer hardware for machine learning, optimizing power, performance and cost for cloud computing services, and delivering cloud computing services at scale

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Other	common law basis of opposition

Mark cited by opposer as basis for opposition

U.S. registration no.	5760437	Application date	12/29/2017
Register	Principal		
Registration date	05/28/2019	Foreign priority date	NONE
Word mark	BRAINIUUM STUDIOS		
Design mark			
Description of mark	NONE		
Goods/services	Class 009. First use: First Use: 2008/12/30 First Use In Commerce: 2008/12/30 Computer game software for video and computer games; Downloadable electronic game software for use on mobile phones, tablets and other electronic mo-		

	bile devices
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Attachments	87737334#TMSN.png(bytes) Notice of Opposition.pdf(148268 bytes) Opposition Exhibit A.pdf(49425 bytes)
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Signature	/B. Anna McCoy/
Name	B. ANNA MCCOY
Date	01/17/2022

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

Brainium Studios LLC,)	
)	Opposition No. _____
Opposer,)	
)	App. No. 90/350,810
v.)	
)	Mark: TRAINIUM
Amazon Technologies, Inc.)	
)	
_____ Applicant.)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

In the matter of the application of Amazon Technologies, Inc. (hereinafter referred to as the “Applicant”), for registration of the mark TRAINIUM (“Applicant’s Mark”), U.S. Application No. 90/350,810 (“the Application”), published in the *Trademark Official Gazette* on July 20, 2021, Brainium Studios LLC (hereinafter “Opposer”), an Oregon limited liability company with a business address at 1022 NW Marshall Street, Suite 480, Portland, Oregon 97209, believes it will be damaged by registration of the Applicant’s Mark, and hereby opposes registration.

The grounds for Opposition are as follows:

1. Opposer is a limited liability company organized and existing under the laws of the State of Oregon, with a business address at 1022 NW Marshall Street, Suite 480, Portland, Oregon 97209.
2. Opposer has been, and continues to be, engaged in the business of creating, designing and distributing computer game software for video and computer games, including games for mobile devices through AI and other advanced software technologies.
3. Opposer’s apps and software programs are among the most popular and successful apps in the marketplace, with high levels of downloads on prominent online platforms.

4. Opposer’s popular Solitaire game alone has been downloaded more than 20 million times by customers from all over the world.

5. Opposer’s Solitaire game is featured in every Tesla car, where Opposer’s Solitaire game was the second most played game in 2020.

6. Opposer promotes and sells its goods and services through various channels and distribution networks, including in the online marketplace and via app stores, such as the Apple App Store and the Google Play Store.

7. Opposer markets and distributes its software goods and services under the fanciful and distinctive house marks BRAINIUM and BRAINIUM STUDIOS (“Opposer’s Marks”).

8. Since at least as early as December 30, 2008, Opposer has used and continues to use Opposer’s Marks in connection with computer game software for video and computer games, downloadable electronic game software for use on mobile phones, tablets and other electronic mobile devices, and related goods and services (“Opposer’s goods and services”) in U.S. commerce. Opposer has held rights in the Opposer’s Marks since at least as early as December 30, 2008, by virtue of Opposer’s continuous use in U.S. commerce of Opposer’s Marks.

9. Among its registrations, Opposer owns the United States trademark registration shown in the chart below. A printout of the current TSDR database records and registration certificate for the below registration is annexed hereto as **Exhibit A**.

Mark	Reg. No. / Reg. Date	Class / Goods and Services
BRAINIUM STUDIOS	5760437 May 28, 2019	<i>Class 9:</i> Computer game software for video and computer games; Downloadable electronic game software for use on mobile phones, tablets and other electronic mobile devices

10. Through use of Opposer’s Marks, in the United States and abroad, Opposer has accrued common law rights in Opposer’s Marks, including common law rights in relation to computer game software for video and computer games, downloadable electronic game software for use on mobile phones, tablets and other electronic mobile devices, and related goods and services.

11. Opposer has used and continues to use Opposer’s Marks and variations thereof, and the goods and services in connection therewith have been popular and the subject of significant advertising and promotional activities over the years.

12. Opposer’s use of Opposer’s Marks has been valid and continuous since at least as early as the dates of Opposer’s first use, and Opposer has not abandoned Opposer’s Marks. Opposer’s Marks are symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in use, advertising, and promotion. Opposer’s Marks identify and distinguish Opposer’s goods and services from the goods and services of others, and identify the source and origin thereof, both in industry circles and to the public.

13. This Notice of Opposition is timely filed. Opposer requested two extensions of time to oppose the Applicant’s Application, and the Trademark Trial & Appeal Board of the United States Patent and Trademark Office extended the time to oppose the application to January 16, 2022. As January 16, 2022 fell on a Sunday and January 17, 2022 is a federal holiday, the true deadline to oppose is January 18, 2022.

14. Notwithstanding Opposer’s rights in and to Opposer’s Marks, Applicant, on December 1 2020, filed Application Ser. No. 90/350,810 shown in the chart below for registration of the mark TRAINIUM (“Applicant’s Mark”) in classes 9, 40, and 42 under Section 1(b). The application was published in the *Trademark Official Gazette* on July 20, 2021 for the goods and services below, in classes 9, 40, and 42.

Mark	App. No. / Filing Date	Class / Goods and Services
TRAINIUM	90/350,810 Dec. 01, 2020 Publication Date: July 20, 2021	Class 9: Computer hardware for training machine learning models across applications; Computer hardware for training and accelerating machine learning models for image recognition, natural language processing, speech recognition, translation, personalization, fraud detection, forecasting, autonomous vehicles, and recommendation engines; Computer hardware for machine learning acceleration across applications; Computer hardware specifically designed to facilitate the delivery of cloud computing services, namely, semiconductors, computer chips, integrated circuits, central processing units, electronic circuits and microprocessors; computer chips; computer central processing units; circuit boards; electronic circuit cards; integrated

		<p>circuit modules; downloadable computer software for use in the operation of semiconductors, computer chips, and central processing units; downloadable computer software development tools; downloadable computer software for developing computer hardware; downloadable computer firmware and software for use in the operation of semiconductors, computer chips, and central processing units; downloadable computer software used for advanced cloud computing functions in the nature of machine learning, optimizing power, performance and cost for cloud computing services, and delivering cloud computing services at scale; computer hardware used for advanced cloud computing functions in the nature of machine learning, optimizing power, performance and cost for cloud computing services, and delivering cloud computing services at scale; downloadable computer software for operation, management and control of computer chips, central processing units and microprocessors</p> <p>Class 40: Custom manufacture of computer hardware, in particular semiconductors, computer chips, integrated circuits, and central processing units; manufacturing electric and electronic components for others</p> <p>Class 42: Providing temporary use of on-line non-downloadable cloud computing software for use with operating and running computer hardware for accelerating machine learning; Providing temporary use of on-line non-downloadable cloud computing software for training machine learning models across applications; Providing temporary use of on-line non-downloadable cloud computing software for use with operating and running computer hardware for training and accelerating machine learning models for image recognition, natural language processing, speech recognition, translation, personalization, fraud detection, forecasting, autonomous vehicles, and recommendation engines; Computer hardware engineering services; design of semiconductors, integrated circuits, computer chips and central processing units for others; Providing temporary use of online non-downloadable cloud computing software for use with operating and running computer hardware for machine learning, optimizing power, performance and cost for cloud computing services, and delivering cloud computing services at scale</p>
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15. Applicant does not claim a date of first use, and no statement of use has been filed with the United States Patent and Trademark Office for the above application.

16. Applicant's filing date for the above application is subsequent to Opposer's first use date for Opposer's Marks.

17. Applicant's filing date is also subsequent to Opposer's filing dates for Opposer's Marks.

18. Applicant's first use dates, if any, will be subsequent to Opposer's first use dates for Opposer's Marks.

19. Applicant's first use dates, if any, will also be subsequent to Opposer's filing dates for Opposer's Marks.

20. Applicant's first use dates, if any, will also be subsequent to the date upon which Opposer's Marks became famous.

21. Applicant's TRAINIUM mark is nearly identical to Opposer's BRAINIUM mark, with the Applicant merely replacing the letter B in Opposer's mark with the letter T. The letters B and T are often pronounced similarly, and the combination of T with RAINIUM creates a mark with obvious visual and aural similarities to the coined and distinctive BRAINIUM mark.

22. Applicant's TRAINIUM mark is highly similar to Opposer's BRAINIUM STUDIOS mark, such that consumers are likely to be confused between the marks.

23. Applicant's recited goods and services are overlapping with, complementary to, and /or similar to the goods and services offered by Opposer under Opposer's Marks, including the goods and services in connection with which Opposer has accrued common law rights.

24. Applicant's trade channels and consumer audience are likely to be similar to and/or overlapping with the trade channels and consumer audience for Opposer's goods and services sold and/or provided under Opposer's Marks.

25. Applicant's Mark, when used in connection with the goods and services set forth in its application, is confusingly similar to Opposer's Marks. Consumers will likely be confused as to the source of any goods and services offered by Applicant under Applicant's Mark, due to Opposer's senior use of BRAINIUM and BRAINIUM STUDIOS, and registration for Opposer's BRAINIUM STUDIOS Mark, for the goods and services provided under Opposer's Marks.

26. Opposer's Marks are distinctive and famous as that term is defined under 15 U.S.C. §1125, and became famous long prior to July 20, 2021, the effective filing date for Applicant's Application No. 90/350,810 for the mark TRAINIUM.

27. Registration of Applicant's Mark for the applied-for goods and services is likely to cause confusion, mistake, or deception among consumers. Registration of Applicant's Mark is also likely to damage the goodwill and consumer recognition that Opposer has built up in Opposer's Marks.

28. Registration of Applicant's Mark for the applied-for goods and services is also likely to dilute Opposer's distinctive and famous BRAINIUM and BRAINIUM STUDIOS marks in violation of Section 43(c) of the Trademark Act. Specifically, Opposer claims that (1) is owns famous marks, BRAINIUM and BRAINIUM STUDIOS, that are distinctive, (2) that the Applicant's use of its applied-for mark in commerce dilutes (or will dilute) Opposer's famous BRAINIUM and BRAINIUM STUDIOS marks, (3) that Applicant's use of its applied-for mark (if any) began after Opposer's marks become famous, and (4) that Applicant's use of its mark is likely to cause dilution by blurring.

WHEREFORE, for the reasons set forth above, Opposer believes that it will be damaged by registration of Applicant's Mark in Ser. No. 90/350,810 and prays that registration be denied.

Opposer authorizes the Commissioner for Trademarks to charge the fee for filing this Notice of Opposition, or any other additional fees that may be due, to Deposit Account 601570.

DATED this 17th day of January, 2022.

Respectfully submitted,

McCoy Russell LLP



B. Anna McCoy
Oregon Bar Member, OR Bar Num.
003165 (member in good standing)
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United States of America

United States Patent and Trademark Office

BRAINIUM STUDIOS

Reg. No. 5,760,437

Registered May 28, 2019

Int. Cl.: 9

Trademark

Principal Register

Brainium Studios LLC (OREGON LIMITED LIABILITY COMPANY)
Suite 480
1022 Nw Marshall Street
Portland, OREGON 97209

CLASS 9: Computer game software for video and computer games; Downloadable electronic game software for use on mobile phones, tablets and other electronic mobile devices

FIRST USE 12-30-2008; IN COMMERCE 12-30-2008

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

No claim is made to the exclusive right to use the following apart from the mark as shown: "STUDIOS"

SER. NO. 87-737,334, FILED 12-29-2017



Andrei Iancu

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.